IN THE UTAH SUPREME COURT

SPORTS MEDICINE RESEARCH AND TESTING LABORATORY, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, and UTAH STATE TAX COMMISSION, Respondents.	**REPLY BRIEF OF PETITIONER** **Case No. 20220786-SC**

On Petition for Review of Final Decision of the Utah State Tax Commission

Erin Middleton
Assistant Solicitor General
Michelle Lombardi
Assistant Attorney General
160 East 300 South, Fifth Floor
P.O. Box 140858
Salt Lake City, Utah 84114-0858
Telephone: (801) 366-0533
Email: emiddleton@agutah.gov
mlombardi@agutah.gov
Attorneys for Respondent Utah State Tax Commission

Samuel A. Lambert (11915)
Bruce Olson (2468)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543
Email: slambert@rqn.com
bolson@rqn.com
Attorneys for Sports Medicine Research and Testing Laboratory

Bradley C. Johnson
Timothy A. Bodily
Deputy District Attorneys
35 East 500 South
Salt Lake City, Utah 84111
Telephone: (385) 468-7765
Email: bcjohnson@slco.org
tbodily@slco.org
Attorneys for Respondent Board of Equalization of Salt Lake County

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INTRODUCTION

SMRTL is a nonprofit organization that uses its property exclusively for charitable purposes. Under the Utah Constitution, property owned by a nonprofit entity and used exclusively for charitable purposes is tax exempt. Thus, as SMRTL established in its opening brief, SMRTL's application for a property tax exemption was improperly denied.

The Salt Lake County Board of Equalization ("County") and the Tax Commission ("Commission") (collectively, the "Agencies") dispute that SMRTL's property qualifies for exemption. However, the Agencies' arguments are not well founded. The Agencies' briefing conflates the relevant legal terms, and their arguments misstate the holdings in this Court's precedent. Moreover, the Agencies fail to engage with the substance of SMRTL's arguments and advocate principles irreconcilable with Utah law and with the Commission's own practices. Indeed, most of the Agencies' arguments are red herrings, resting on claims that are groundless (for example, "charitable" does not mean "charitable" in the property tax context, and federal law related to unrelated business income is inconsistent with Utah property tax law). Those claims are meritless.

The focus of this case is on the standard that applies when a charitable entity raises revenue through activities substantially related to its charitable purposes. More specifically, the question is what standard applies when an entity that is charitable in purpose and activity also builds and maintains its expertise, and obtains essential data, by providing its services to non-charitable recipients at undiscounted rates. The Agencies hardly address these questions. The County simply asserts, without supporting authority, that all revenue-raising activity is non-charitable for property tax purposes unless the

payors are charitable recipients. The Commission appears to share this view. But that standard has no legal pedigree. It cannot be found outside the County's brief.

SMRTL, however, established that the standard applicable under federal income tax law is widely recognized as an appropriate test for determining whether a charitable entity's revenue-raising activity is, itself, charitable. That standard has also been widely incorporated into Utah tax law, and it focuses on whether revenue-raising activities are substantially related to the entity's charitable purposes. Under that standard, the activity at issue here is exempt from state and federal income tax. It is also charitable use that qualifies for property tax exemption.

The Commission thus erroneously held that SMRTL's testing of professional athletes transforms the use of SMRTL's property from charitable to non-charitable. As SMRTL explained in its opening brief, this Court's case law warrants the opposite conclusion. But were SMRTL incorrect in that assessment, this Court should revisit its precedent and interpret the constitutional language in accordance with its original public meaning. When given the meaning ascribed to it by the people of Utah, the charitable use exemption applies to SMRTL's use of its property.

ARGUMENT

I. The Agencies Misstate the Applicable Standard of Review.

In the underlying proceeding, the Commission held that SMRTL had not met the "'used exclusively' requirement contained in Article XIII, Section 3 of the Utah Constitution and Utah Code §59-2-1101(3)(a)." R.490. There is a disagreement among the parties as to the standard that applies when reviewing the Commission's conclusion.

The County characterizes the ruling as including both "the interpretation of the legal standards regarding exclusive use, which should be given no deference, and a fact-intensive inquiry by the Commission in the application of that standard, which should be given substantial deference." *County Br.* at 2. The Commission likewise asserts that "interpretation of the property tax exemption is a legal conclusion reviewed for correctness," but whether SMRTL qualified for the exemption is a "fact-like" "mixed question" that should be reviewed with deference. *Comm'n Br.* at 3. SMRTL disagrees.

This Court's prior cases reviewing applications for property tax exemptions do not make explicit a generally applicable standard of review for such cases. Which standard applies to the ruling at issue here is not a difficult question. This proceeding turns on a question of constitutional law—the meaning of exclusive charitable use and whether the constitutional exemption may apply when a charitable entity raises revenue through activities substantially related to its charitable purposes. That purely legal question will arise frequently and requires the standardization developed through de novo review. *See In re Adoption of Baby B.*, 2012 UT 35, ¶¶ 40–47, 308 P.3d 382.

Moreover, the Commission's order did not involve a fact-intensive inquiry. *See* R.473–90. The Commission characterized the facts as undisputed, R.484; observed that SMRTL raises substantial revenue through services provided to non-charitable recipients, R.490; and on that basis, denied the exemption, *id.* The Commission did not wade into a fact-intensive application of the law to the facts. De novo review thus applies to all aspects of the Commission's ruling on review in this Court. *SMRTL Br.* at 3.

II. The Agencies Conflate the Relevant Legal Terms.

There are four terms integral to the analysis in this case: nonprofit, tax exempt, 501(c)(3), and charitable. While those terms are often used interchangeably in common parlance, they are distinct. A venn diagram would show significant places where the terms do not overlap. Each term, in the order discussed below, generally describes a smaller group of entities. The Agencies' arguments, however, frequently use the terms imprecisely and interchangeably. To dispel the confusion created by the Agencies' blending of these terms, SMRTL provides an overview of the distinctions between them.

Nonprofit. A nonprofit entity need not be, and many are not, tax exempt, 501(c)(3), or charitable. Contrary to the County's suggestion, *County Br.* at 29, the term "nonprofit" does not describe an entity organized to lose money. A nonprofit entity's revenue can exceed its expenses such that it can have positive net income, or "profits." Bruce Hopkins, *The Law of Tax-Exempt Organizations*, 4 (12th ed. 2019) ("[I]t is quite common for nonprofit organizations to generate profits."). The defining characteristic of a nonprofit entity is not an absence of net earnings, but the lack of purpose and authority to distribute net earnings to private owners. *See, e.g.*, *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 585 (1997) ("A nonprofit entity is ordinarily understood to differ from a for-profit corporation principally because it is barred from distributing its net earnings, if any, to individuals who exercise control over it ...." (internal quotations omitted)); *see also* Utah Code §§ 16-6a-1301, 1302 (generally barring such distributions).

Tax Exempt. The terms "tax exempt" or "exempt" usually describe an entity exempt from federal income tax under IRC § 501(a), although the terms are sometimes used to

refer to an entity exempt from property or sales tax. Not all nonprofit organizations are tax exempt. Moreover, not all tax-exempt entities are 501(c)(3) or charitable. Many different types of entities may qualify as tax exempt, including both charitable entities and many non-charitable entities.

Section 501(c)(3) Organization. 501(c)(3) organizations are a small subset of nonprofit and tax-exempt entities. An organization may qualify for 501(c)(3) status by meeting "any purpose or purposes [of the several] specified in section 501(c)(3)." 26 C.F.R. ("Treas. Reg.") § 1.501(c)(3)-1(a)(2); *see* Internal Revenue Code (26 U.S.C.) ("IRC") § 501(c)(3). "Charitable," construed "in its generally accepted legal sense" is one of the enumerated 501(c)(3) purposes. *Id*. § 1.501(c)(3)-1(d)(2); *see also* IRC § 501(c)(3). An organization may also qualify for 501(c)(3) status by, for example, qualifying as an "educational organization" or "scientific organization." Treas. Reg. § 1.501(c)(3)-1(d)(3), (5). Nevertheless, despite being separately enumerated, the other purposes "may [also] fall within the broad outlines of 'charity' as developed by judicial decisions." *Id*. § 1.501(c)(3)-1(d)(2); *see also infra* p.15.

Charitable. As SMRTL established in its opening brief, "charitable" has long been defined as a gift to the community. *SMRTL Br.* at 17–20. Some nonprofit entities, some tax-exempt entities, and many 501(c)(3) entities are charitable. But not every nonprofit, tax-exempt, or 501(c)(3) entity is charitable in the technical legal sense. Thus, when a court holds that a nonprofit, tax-exempt, or 501(c)(3) entity does not use its property for charitable purposes, that holding may merely reflect that the organization's tax-exempt classification is based on something other than charitable purposes.

III. SMRTL's Property Is Used for Charitable Purposes.

A. Utah Law Broadly Defines Charity as a Gift to the Community and Reflects Generally Accepted Notions of Charitable Use.

The term "charitable" has long been defined broadly in a legal sense, and it includes a diverse array of activities that provide a gift to the community. *SMRTL Br.* at 17–18. This understanding of charitable is deeply embedded in Utah law, as it is in other jurisdictions. *Id.* at 20–26. In Utah, as in many other states, the charitable use property tax exemption is strictly construed, which means the exemption is interpreted to be true to its purpose and not to defeat the underlying intent. *Id.* at 22–23. For purposes of the provision, a gift to the community is identified either in the lessening of a government burden or by a substantial imbalance in the exchange between a charity and its charitable beneficiaries. *Id.* 19–20, 27.

The Agencies do not dispute the centuries of precedent broadly defining charity. Instead, the Agencies assert that "charitable" does not mean "charitable" in the property tax context. The Agencies urge the Court to adopt a unique definition of charitable "directly contrary" to the definition used in other jurisdictions and in every other context in Utah law. *County Br.* at 16. The County also urges the Court to make its "gift to the community" analysis more complicated and less accurate. *County Br.* at 23. The Agencies' arguments rest on a misunderstanding of the relevant terms, a misreading of this Court's caselaw, and misstatements of the facts. The Agencies' approach would also largely eviscerate the property tax exemption in article XIII, section 3.

1. "Charitable" Means "Charitable" in the Property Tax Context.

Despite the long-established, deeply embedded meaning of "charitable," the Agencies urge this Court to abandon it. The Agencies assert that in the property tax context "charitable" does not mean "charitable."

The Agencies do not clarify what their alternate definition is, but merely insist that it is narrower than the generally understood definition. Yet, the narrower definition the Agencies advocate is not used in any other context in Utah or in any other jurisdiction. Indeed, the County freely acknowledges that its proposed definition is "directly contrary" to "federal charitable exemption standards," *County Br.* at 16, and the Commission openly urges the Court to ignore "definitions of charitable in other contexts," *Comm'n Br.* at 29, 33. The Agencies' position is that an entity's purposes may be charitable for income and sales tax purposes but not in the property tax context. As the Commission notes, divergent definitions are not unheard of. But there is no principled basis for the distinction the Agencies advocate here.

a. This Court Interprets Charitable Strictly, Not Narrowly.

The Agencies present a false dilemma, asserting this Court must interpret "charitable" narrowly or broadly. *County Br.* at 8–9. That is not the case. Charitable is a broad term that does not require a narrow or broad construction. Instead, this Court interprets charitable strictly, meaning the term is interpreted in accordance with its legally accepted meaning. *SMRTL Br.* at 22–23.

The Agencies' request for a narrow interpretation is based on their misreading of *Loyal Order of Moose*. They contend that, in *Loyal Order of Moose*, this Court adopted a

narrow definition inconsistent with the term's generally accepted meaning. *See, e.g.*, *County Br.* at 8–9, 21; *Comm'n Br.* at 31. But the Agencies are incorrect. This Court did not endorse a narrow construction of charitable in the property tax context. Rather, the Court adopted a strict interpretation, meaning the Court held that only property used exclusively for purposes encompassed within the generally accepted legal meaning of "charitable" is tax exempt under article XIII, section 3. *SMRTL Br.* at 22, 38–39.

Indeed, the only time this Court used the term "narrow" in *Loyal Order of Moose* was to warn that the Court's interpretation should be neither broad nor narrow: "Our statutes granting tax exemptions cannot be broader or narrower than our constitutional provision on which they are based." *Loyal Order of Moose v. County Board of Equalization*, 657 P.2d 257, 261 (Utah 1982). Likewise, this Court has repeatedly looked unfavorably on proposed narrow interpretations. *See, e.g.*, *Howell v. Cty. Board of Cache County*, 881 P.2d 880, 887 (Utah 1994) (rejecting "assessors' narrow definition"); *Salt Lake County v. Tax Comm'n ex. rel. Laborers Local No. 295*, 658 P.2d 1192, 1197 n.1 (Utah 1983) (observing that an interpretation "significantly narrow[ing] the exemption mandated in Article XIII, § 2" would "violate the principle that our tax legislation cannot validly limit the scope of the exemption in the Constitution").

Moreover, this Court's precedent is grounded on the notion that the exclusive use provision cannot be interpreted literally because such a construction would be *too narrow*, "virtually eliminating tax exemptions" in violation of constitutional intent. *Loyal Order of Moose*, 657 P.2d at 262–63; *SMRTL Br.* at 36–37.

b. The Meaning of Charitable Is Not Different in the Property Tax Context.

The Agencies insist that the nature of property tax demands a uniquely narrow definition of "charitable." *See, e.g. County Br.* at 8–9, 34. Yet, the many rationales for exempting a charitable entity from taxation do not turn on how the taxes are calculated or on the type of tax at issue. While the Agencies assert property tax is different, the Agencies cite no authority suggesting the terms defining the bases for property tax exemption (namely, charitable, religious, and educational) are defined differently in the property tax context. *County Br.* at 9–12; *Comm'n Br.* at 31–36.

The Agencies are, however, appropriately concerned that "[c]onstruing the exemption too liberally requires other taxpayers to pay more than their equitable share." *Comm'n Br.* at 12. By the same token, however, construing the exemption too narrowly defeats the exemption's purposes and requires charitable entities to pay more than their equitable share. The equities between taxable and exempt property were balanced and baked into the Utah Constitution. And as this Court has warned, an artificially narrow interpretation is not a public victory—it frustrates the exemption's purpose. *See Loyal Order of Moose*, 657 P.2d at 261; *Laborer's Local*, 658 P.2d at 1197 n.1.

The Commission also does not, in practice, apply a narrower definition of terms defining the bases for exemption in the property tax context. Rather, the Commission presumes that entities or activities encompassed within the terms' generally understood legal meanings are also exempt from property tax. *See, e.g.*, Utah State Tax Commission Property Tax Exemptions Standards of Practice § 2.13.6 ("If the applicant has a religious

exemption under IRS 501(c)(3) [sic], then an exemption should be granted unless available information indicates that use of the facility is contrary to the organization's purpose.").[1]

The Agencies' arguments are also broader than they suggest. The Agencies' claim is that property tax is unique—not that the charitable use provision is unique. Under their view, the "unique" nature of the property tax demands a uniquely narrow interpretation. *County Br.* at 9; *Comm'n Br.* at 7. This Court would thus be required to adopt uniquely narrow definitions of "religious," "educational," "public library," "school district," "places of burial," "disabled person," "orphan," "the poor," and every other term used in article XIII defining property tax exemptions. This Court's analysis would devolve into assessing whether every part of a charitable, religious, or educational institution's property, such as a parking lot, lawn, basketball court, or bathroom, falls within a uniquely narrow definition of charitable, religious, or educational use.

The Agencies' approach would thus eviscerate property tax exemptions by unmooring them from a faithful interpretation of the terms in the constitution, in favor of something narrower—which this Court has repeatedly warned against.

[1] The Agencies also misunderstand the principle that "all doubts must be resolved against the exemption." *Comm'n Br.* at 12; *County Br.* at 22 (quotations and internal quotation marks omitted). An exemption must be "granted in express terms." *Parker v. Quinn*, 64 P. 961 (1901) (internal quotation marks omitted). Doubts about whether an exemption exists are therefore resolved against a proposed exemption. *Friendship Manor Corp. v. Tax Comm'n*, 487 P.2d 1272, 1277 (Utah 1971) ("[T]he language relied on as creating the exemption should be … clear." (quoting *Parker*, 64 P. at 961)). Here, however, there is no doubt to be resolved because the constitution explicitly exempts property used exclusively for charitable purposes.

c. Utah Employs the Same Definition of Charitable as Other Jurisdictions.

In support of their argument urging a uniquely narrow definition of exclusive charitable use, the Agencies claim this Court has intentionally set Utah law apart from the general principles applied in other jurisdictions. *See, e.g.*, *County Br.* at 18. The Agencies are mistaken. Utah caselaw reflects a strong affinity with the generally accepted meaning of charitable and the approaches other jurisdictions have taken when applying it.

This Court did not, for example, adopt a unique or unusually narrow definition of charitable in *Loyal Order of Moose*, as the Agencies imply. *County Br.* at 18; *Comm'n Br.* at 18. As this Court observed, tax exemptions are generally "strictly construed," but historically some jurisdictions have paid only "lip service" to the strict construction requirement. *See SMRTL Br.* at 38–39; *Utah Cnty. v. Intermountain Health Care, Inc.*, 709 P.2d 265, 268 (Utah 1985) ("*IHC*"). In *Loyal Order of Moose*, this Court essentially acknowledged that it had been a "lip service" jurisdiction, interpreting the exclusive charitable use provision too broadly. The Court returned to a strict (*i.e.*, accurate) construction. *SMRTL Br.* at 22. Under a strict construction, non-charitable entities doing a bit of charity on the side, such as labor unions, social clubs, and fraternal societies, did not qualify. *See IHC* at 268–69; *Loyal Order of Moose*, at 264.

That result did not render Utah law unique. Neither common law nor federal law views labor unions, social clubs, or fraternal societies as charitable. *See SMRTL Br.* at 38–39. Thus, when this Court pulled back the application of the exclusive charitable use

provision in *Loyal Order of Moose*, the Court aligned Utah law with approaches taken in most other jurisdictions.

This Court's return to the *Parker* standard also further aligned Utah law with tax law generally. Under federal income tax law, an activity engaged in solely for the production of funds is not substantially related to accomplishing charitable purposes even if proceeds are put toward charitable ends. *See* Treas. Reg. § 1.513-1(d)(1)–(2). The *Parker* standard thus mirrors the approach taken in federal income tax law, under which an activity engaged in solely for the production of funds is not a charitable use.[2] *Parker v. Quinn*, 64 P. 961, 962 (1901) (exemption does not extend to property merely "held as a source of revenue").

Likewise, in *IHC*, this Court did not "separate[]" Utah law from that of other jurisdictions, as the County incorrectly claims. *See County Br.* at 18. In *IHC*, the Court remarked that it saw the charitable status of nonprofit hospitals differently than did "other jurisdictions [cited] in the dissent." 709 P.2d at 277. This was not a rebuke of the generally accepted meaning of charitable and its application, but dismissal of reasoning regarding nonprofit hospitals the Court found unpersuasive. *See id.* Moreover, in that same opinion, the Court employed language taken from the seminal *Jackson* case, rendered in

[2] *Parker* does not, however, address an organization's engagement in a trade or business "where the conduct of the … activities has *causal relationship* to the achievement of exempt purposes (other than through the production of income)." Treas. Reg. § 1.513-1(d)(2) (emphasis added). Utah caselaw has not addressed that specific circumstance in the property tax context. But under Utah income and sales tax law as well as under federal law, a charitable entity's engagement in such activity is charitable and tax exempt. *SMRTL Br.* at 41–44.

Massachusetts, and adopted a six-factor analysis pulled from a Minnesota decision. *IHC*, 709 P.2d at 270 n.6, 284; *see SMRTL Br.* at 21. *IHC* does not support a claim that Utah has adopted a unique definition of exclusive charitable use.

2. Organizations That Qualify as Charitable Under Federal Law Generally Qualify as Charitable Under Utah Law.

The Agencies also urge this Court to disregard federal standards regarding taxation of charitable organizations, even though those standards are embedded throughout Utah law, *e.g., Comm'n Br.* at 30; *County Br.* at 12, 34, and even though these same federal standards are determinative for purposes of Utah income and sales tax, *SMRTL Br.* at 42. Given the congruence between Utah and federal law, an entity that is tax exempt as a charitable organization under section 501(c)(3) is generally also tax exempt for purposes of Utah property tax with respect to property used in furtherance of its charitable purposes. *SMRTL Br.* at 23–27. Of course, as the Agencies observe, federal law is not determinative in the property tax context. *See County Br.* at 14, 15, 35; *Comm'n Br.* at 30. But federal law plays a far greater role in Utah property tax law than the Agencies acknowledge.

In practice, the definitions used to determine whether property is used exclusively for "educational" or "religious" purposes both make reference to IRC § 501(c)(3). Utah Tax Commission standards provide that "[i]f [an] applicant has a religious exemption under IRS 501(c)(3) [sic], then [a property tax] exemption should be granted unless available information indicates that use of the facility is contrary to the organization's purpose." Utah State Tax Commission Property Tax Exemptions Standards of Practice § 2.13.6. In addition, the Utah Property Tax Act defines "educational purposes" in part by referencing

IRC section 501(c)(3). Utah Code § 59-2-1101(1)(c)(ii)(A). Moreover, the definitions for property tax exemptions also explicitly reference "federal income tax" treatment of entities, *id.* § 59-2-1101(1)(h)(ii)(A), and incorporate federal legal definitions in six other places, *see id.* § 59-2-1101(1)(h)(i)(C) (incorporating IRC § 501(c)(3)); *id.* § 59-2-1101(1)(i)(iii) (incorporating IRC); *id.* § 59-2-1101(1)(i)(iv) (incorporating federal regulation); *id.* § 59-2-1101(1)(j) (incorporating federal regulation); *id.* § 59-2-1101(6)(a)(ii) (incorporating IRC); *id.* § 59-2-1101(6)(b) (incorporating IRC).

The Agencies acknowledge the role federal tax law plays in setting Utah state income tax standards. *Comm'n Br.* at 33–34. But the Agencies attribute the use of federal standards in state income tax law to the legislature's broader authority to define "charitable" in that context. *Comm'n Br.* at 33–36. The Agencies' argument misses the mark. Utah's incorporation of federal standards illustrates that generally accepted understandings of charity and charitable use are thoroughly embedded in Utah law, including the applications of those understandings set forth in federal tax law.

The definition of "charitable" is also not broader under federal law than under Utah law. The definition is merely broader than the interpretation for which the Agencies advocate. As the Agencies point out, section 501(c)(3) delineates more bases for tax-exempt status than does article XIII, section 3. *County Br.* at 16; *Comm'n Br.* at 31. But the length of the lists does not, itself, indicate a difference between the definitions of "charitable" encompassed in the two provisions.

As the Agencies note, section 501(c)(3) lists "charity" along with other tax-exempt categories, such as "testing for public safety." *Comm'n Br.* at 31. But the term "charity" is

used "in its generally accepted legal sense" and is "not to be construed as limited by the separate enumeration … of other tax-exempt purposes which may fall within the broad outlines of 'charity' as developed by judicial decisions." Treas. Reg. § 1.501(c)(3)-1(d)(2). Promoting public safety, advancing social welfare, lessening neighborhood tensions, prevention of cruelty to children or animals, and erecting public buildings may thus be charitable under federal law, even if separately enumerated in section 501(c)(3).[3] The separate enumeration of "educational" and "charitable" in the Utah Constitution likewise does not preclude overlap between the two.

The Agencies also point to circumstances in which a 501(c)(3) entity has occasionally been denied a property tax exemption, but those denials do not demonstrate a gap between state and federal law regarding charitable use. In *Parker*, for example, the relief society was denied an exemption because it used its property to raise income through activities unrelated to its charitable purposes. Similarly, in *Friendship Manor*, a charitable entity owned a rental property that was not entitled to exemption. *Friendship Manor Corp. v. Tax Comm'n*, 487 P.2d 1272 (Utah 1971). There was no showing that use of the property in either case was substantially related to providing a gift to the community.

A clear understanding of the terms nonprofit, tax exempt, 501(c)(3), and charitable also reveals that many of the Agencies' arguments are merely an irrelevant tautology: the Court has held that non-charitable activities are not charitable. The County argues, for

[3] For example, the IRS describes SMRTL as a "public charity" that is also "described in section 509(a)(4)" (*i.e.*, "organized and operated exclusively for testing for public safety"). R.494; IRC § 509(a)(4).

example, that "[t]his Court has repeatedly denied the charitable exemption to entities that were exempt under IRS standards." *County Br.* at 14. Yes. Many federally tax-exempt entities, such as labor unions, social clubs, and fraternal benefit societies, are non-charitable. *SMRTL Br.* at 38–39; *supra* p.11. And non-charitable tax-exempt entities have been denied charitable tax exemptions. This tautology appears throughout the Agencies' briefing. *See, e.g.*, *Comm'n Br.* at 30–31 ("Even if an entity is a nonprofit, the exclusive charitable use requirement must still be met."); *id.* at 32 (Court "has denied [charitable] exemptions for other nonprofit entities ... all of which would ... qualify as nonprofits or federal tax-[exempt] enterprises").

The Agencies' arguments do not establish any material difference between Utah and federal law on the meaning of "charitable." Federal law is thus highly instructive with respect to the meaning of "charitable" in Utah, including in the property tax context.

B. SMRTL Uses Its Property for Charitable Purposes.

SMRTL provides a gift to the community both by lessening government burdens and by providing, at a substantial imbalance, services to a charitable class. *SMRTL Br.* at 27–31. The Agencies appear largely to accept that SMRTL's activities provide a gift to the community.[4] The Agencies disagree, however, on the standard the Court employs to make that assessment. They also contend SMRTL's showing of a gift to the community was insufficiently quantified. But the County's new proposed standard and the quantification

[4] *See, e.g.*, *County Br.* 33 (taking issue with SMRTL's testing of professional athletes, but conceding SMRTL has "a much stronger argument" related to its other activities); *Comm'n Br*. at 42–43 (taking issue with SMRTL's testing of professional athletes and otherwise merely claiming SMRTL did not relieve an Olympics-related government burden in 2020).

objections the Agencies raise are inconsistent with the generally understood meaning of charitable and the standard for assessing charitable use, which SMRTL readily satisfies.

1. SMRTL Substantially Lessens Government Burdens.

As SMRTL demonstrated in its opening brief, SMRTL provides a gift to the community by lessening government burdens. *SMRTL Br.* at 27–30. The Agencies do not offer any meaningful analysis suggesting SMRTL's provision of free and discounted services, and ample other assistance, to government agencies does not lessen government burdens. Instead, the Agencies try to downplay the value of the gift by characterizing it as insubstantial. That claim is both factually and legally misplaced.

As a factual matter, the County characterizes SMRTL's free and discounted services to government entities as "some incidental work and benefits." *County Br.* at 42. In a related vein, the Commission claims that because SMRTL performs testing related to professional sports, "there was no ... lessening of a government burden." *Comm'n Br.* at 42. Neither statement is a fair characterization of the facts, which are undisputed, as the Commission recognized when issuing its ruling. R.504.

The undisputed facts include that SMRTL provides substantial subsidized services to government agencies, working either for free or at heavily reduced rates. *SMRTL Br.* at 5–7. SMRTL provides extensive free and/or heavily discounted testing to DOD, DEA, and the FBI. *Id.* SMRTL works with "state governments" and loses money on every test it performs for the University of Utah. R.497–98. In addition, by testing athletes, SMRTL obtains data "the government will never see." R.497. SMRTL gathers this information, performs research, and makes "important recommendations to ... enforcement agencies."

Id. SMRTL also provides support to legislative bodies acting to address matters of public health, and SMRTL provides free testing in support of law enforcement efforts. *SMRTL Br.* at 6. In addition, SMRTL supports the State's efforts to return the Olympic games to Utah and provides discounted testing and free consultation services to Olympics-related organizations. *Id*. at 6–7. SMRTL is also the only entity of its kind that is not government funded. *Id.* at 4.

Contrary to the County's assertion, in-depth factual development related to Olympic organizations and properties is unnecessary here. *County Br.* at 33 n.27. The fact that "exemptions have been routinely granted to … Olympic entities," *Comm'n Br.* at 50, merely illustrates that the State has burdens associated with the Olympics. SMRTL's provision of discounted services to such entities thus lessens the State's burdens. *SMRTL Br*. at 29.

With respect to the governing legal standards, this Court has not interpreted charitable use to require that government burdens be lessened in a particular dollar amount. The inquiry simply asks whether government burdens are lessened. And that is not a high bar. For example, in *Yorgason*, absent the property's charitable use, "at least eleven" people would otherwise have been dependent on government.[5] *Yorgason v. Cty. Board of Equalization*, 714 P.2d 653, 660 (Utah 1986); *see also SMRTL Br.* at 28.

[5] The County asserts that in *Yorgason*, "all 98 tenants were low income." *County Br.* at 33 n.36. But the purpose of the property was to provide "housing for low- *and moderate*-income individuals." *Id*. at 654 (emphasis added). The burden alleviated by supporting the eleven tenants was the Court's focus when discussing lessening government burdens. *Id*. at 660 & n.29.

In *Howell*, the Court indicated that "hospitals' costs associated with providing indigent care far exceed the tax revenues that would be generated by assessing the hospitals' property." *Howell*, 881 P.2d at 889 n.20. The Agencies might thus assert that the lessening of government burdens should be proportional to the property tax that might otherwise be owed. But that bar is also far exceeded here. *SMRTL Br.* at 45–46.

Finally, the Commission claims SMRTL's ability to relieve Utah taxpayers of millions of dollars in Olympics-related costs did not relieve "a government burden *in 2020*." *Comm'n Br.* at 43 (emphasis added). But there is no requirement of a calendar-year match. Even property under construction may qualify as tax exempt. *Infra* pp.37–38. The tax is determined as of January 1. Utah Code § 59-2-103(2). Organizations cannot prove the exact amount of charity that will be performed in the coming months. Moreover, even assuming SMRTL did not lessen Olympics-related tax burdens in the relevant period, that would hardly diminish the overall lessening of government burdens SMRTL has shown.

There is plentiful, uncontroverted evidence that SMRTL lessens government burdens.

2. SMRTL Provides Services at a Substantial Imbalance.

The evidence showing SMRTL provides services to charitable recipients at a substantial imbalance is likewise uncontroverted. *SMRTL Br*. at 7–9, 31. Notably, the tens of thousands of free or discounted tests SMRTL performs for governments and nonprofit entities each year amounts to nearly half of all SMRTL's invoiced testing. R.501; *SMRTL Br.* at 11. Unable to refute this undisputed evidence, the Agencies again attempt to discount it.

The Commission summarily asserts that SMRTL's efforts result in only an "incidental" benefit to the community, *Comm'n Br.* at 42, but the Commission does not indicate how that could be the case. Nor is there any serious question regarding the tremendous substantial imbalance created by SMRTL's provision of free and discounted testing to more than 100 nonprofit and government organizations. R.501, 894–98.

Unable to counter that a substantial imbalance exists, the Commission manufactures a new test and asserts SMRTL failed to meet it. The Commission claims SMRTL "has not shown that most members of the public benefit directly from SMRTL's services." *Comm'n Br.* at 45. But that has never been the standard. Charitable use has never required that most members of the public benefit directly from the organization's charitable activities. Rather, as the County acknowledges, services need not be provided to the general public to constitute charitable use. *County Br.* at 25 n.20.

There is plentiful, uncontroverted evidence that SMRTL provides services at a substantial imbalance.

3. The *IHC* Factors Indicate SMRTL Uses Its Property for Charitable Purposes.

In its principal brief, SMRTL demonstrated that the six *IHC* factors favor SMRTL's application for exemption. *SMRTL Br.* at 32–36. The County and Commission take different positions regarding the factors' relevance and substance. *Infra* pp.42–43; *see also, e.g.*, *Comm'n Br.* at 39–41, 49 (characterizing the factors as "difficult to apply"). But neither Agency analyzes the factors or argues that their application weighs against a grant of SMRTL's application.

4. Quantification Remains a Red Herring.

The Commission recites that SMRTL did not specifically quantify the total amount by which it lessens government burdens and the complete value of the substantial imbalance SMRTL provides. *Comm'n Br.* at 5. But while SMRTL has not quantified the sum total of its gift to the community, nor broken the gift down by the amount each "agency, individual, or organization" receives, *id.*, there is no such requirement to demonstrate charitable use.

The constitutional inquiry focuses on whether the property is used for charitable purposes, not whether a quantum of charity is reached with respect to particular parties.[6] For example, the Court in *Yorgason* did not detail the dollar value of the gift provided to each recipient, but concluded there was an imbalance with respect to the charitable class: "[R]ent[] paid by each tenant is based on ability to pay, and no tenant begins to pay for the total cost of rental and services received." *Yorgason*, 714 P.2d at 659. Likewise, the result in *Parker* would surely have been different had the relief society used the room in question

[6] In *Howell* this Court mentions "quantifying" the gift to the community, but in a manner that is not relevant here. *See* 881 P.2d at 888 ("Under standard V, the hospital must enumerate and total the various ways in which it provides unreimbursed service to the community according to measurement criteria set forth in the standard."). The Commission had promulgated a standard requiring a hospital to "establish that its total gift to the community exceeds on an annual basis its property tax liability for that year." Non-profit Hospital and Nursing Home Charitable Property Tax Exemption Standards, Appendix 2B to Utah Tax Commission Property Tax Exemptions Standards of Practice at Standard V. That standard is not appliable here, as SMRTL is not a hospital. Should the Court announce that a comparable standard applies, it has been met. *SMRTL Br*. at 45–46. If the Court were to announce a different standard, and it is not apparent on the face of the record that SMRTL meets that standard, the Court should remand for further proceedings allowing SMRTL an opportunity to demonstrate compliance with the newly announced standard.

to house orphans, regardless of how many orphans slept there or the dollar value of such accommodations. The Commission concedes this point, admitting that "while some cases may note the charity offsets the tax, that is not the test." *Comm'n Br.* at 27.

The record evidence is uncontested that SMRTL performs tens of thousands of free and discounted tests each year, discounts that add up to millions of dollars. *SMRTL Br*. at 46. As in *Yorgason*, ability to pay is considered and no charitable beneficiary pays for the total cost of services provided. *SMRTL Br*. at 8. SMRTL's charitable work is substantial and uncontested.

5. This Court Should Reject the County's Proposed Three-Part Test.

Although a gift to the community is provided through lessening government burdens or a substantial imbalance, the County proposes a new three-part test, requiring that an organization's activities provide a gift to the government, a gift to the community, and a gift to the charitable recipients. *County Br.* at 23. SMRTL would readily meet the test the County proposes. But SMRTL does not view the County's test as consistent with long-held understandings of charity and charitable use.[7]

One problem with the County's approach is its focus exclusively on the activity at issue, rather than the activity's relationship to the organization's purposes. *County Br.* at 23 (addressing "charitable versus non-charitable *activity*" (emphasis added)). The constitution does not exempt property based on some inherent "nature" of an activity

[7] As we note *infra* p.43, the Commission does not join the County's request for a new test. *Comm'n Br.* at 42 n.14.

viewed in isolation, but looks at how use of property is related to accomplishment of exempt *purposes*.

As noted above, under both Utah and federal law, property is not used for charitable purposes if the property is used solely to generate income, regardless of whether that income is expended for charitable purposes. *Supra*, p.12. But if property is used for an activity that causally contributes to an organization's achievement of its charitable purposes, the activity is charitable even if it raises money—and even if the same activity might not be charitable if performed by a party that does not share those charitable purposes. As SMRTL observed in its principal brief, purpose matters. *SMRTL Br.* at 43.

The County also fails to explain how its test improves upon the present standard. It has long been understood that an organization is charitable if it *either* lessens government burdens *or* provides benefits nonreciprocally to a charitable class. The County urges the Court to reject the "or," *County Br.* at 29, which was articulated in the seminal *Jackson* case and has stood the test of time. *See SMRTL Br.* at 18–19 & n.4. The County provides no justification for throwing the test out. While lessening government burdens and assisting the public are often two sides of the same coin, charitable institutions may also meet community needs the government does not. Such activity is charitable under the long-held understanding of the term.

In any event, SMRTL's use of its property reveals both sides of the gift-to-the-community coin, *SMRTL Br.* at 27–31, and readily meets the test the County proposes.

IV. SMRTL's Property Is Used Exclusively for Charitable Purposes.

The term "exclusive" in the charitable use exemption is not interpreted literally, as a literal interpretation would "virtually eliminat[e] [the] tax exemption[] and thereby violate the intent of the Constitution."[8] *Loyal Order of Moose*, 657 P.2d at 262–63; see *SMRTL Br*. at 36–37. When defining the term's meaning, this Court has determined that property used solely to produce income is not used exclusively for charitable purposes, even when the funds are raised for charitable purposes. *Supra*, p.12. In addition, organizations that engage in a little charity on the side, such as labor unions, social clubs, and fraternal organizations, do not use their property solely for charitable purposes. *Supra*, pp. 11, 16.

But the question this Court has not reached is whether property is used exclusively for charitable purposes when revenue-raising activities conducted thereon are substantially related to the organization's charitable purposes. More specifically, the question is whether property is used exclusively for charitable purposes when the revenue-raising activity causally contributes to the organization's advancement of its charitable purposes, as in this case, by enabling the organization to maintain its expertise and obtain essential data.

In answer to this question, SMRTL demonstrated that such activity is treated as charitable in every other context in Utah law, in federal income tax law, and in other jurisdictions' tax laws, including those pertaining to property. *SMRTL Br.* at 40–43. SMRTL also showed that the federal definition of unrelated trade or business income is a

[8] The Commission's resort to dictionary definitions of "exclusive," *Comm'n Br.* at 14, is thus unilluminating.

useful framework when addressing this issue and that the federal definition of "unrelated trade or business" is thoroughly embedded in Utah law. *SMRTL Br.* at 24, 26.

The Agencies nevertheless respond that such activity is not charitable for purposes of the exclusive charitable use provision. But in making that argument, the Agencies erroneously focus on the activities in the abstract, rather than on the purpose of the activity as required under the constitution. The Agencies also conflate the relevant terms, misunderstand federal tax law, misread this Court's precedent, and unpersuasively attempt to distinguish the exemption provided to nonprofit hospitals.

A. Purpose Is Essential to the Constitutional Inquiry.

The constitutional tax exemption is granted to property "used exclusively for ... charitable ... *purposes*." *SMRTL Br.* at 16 (emphasis added) (quoting Utah Const. art XIII, § 3(1)(f)). The Commission nevertheless asserts that "[t]he test for the exemption is not purpose or intent." *Comm'n Br.* at 26. The County likewise claims that "the dividing principle in income producing activities is … whether the … *activity* constitutes a gift to the charitable recipients." *County Br.* at 35 (emphasis added). Focusing solely on the activity, rather than on purpose, allows the Agencies to adopt a guilty-by-association argument with respect to SMRTL's testing of professional athletes.[9] The Commission thus questions how "professional sports testing" could "somehow [be] charitable." *Comm'n Br.*

[9] The County also advances a misleading claim that SMRTL was created and funded directly by the NFL. *See County Br.* at 2–3. But the record establishes that SMRTL was created as a joint effort among the University of Utah, the United States Anti-Doping Agency, the NCAA, and the NFL Foundation for Health Research. R.495. Any references to NFL involvement in SMRTL's creation are merely shorthand for the NFL-funded charity, as was made clear at the hearing. R.228, 290.

at 28. The County adds that "[s]ervicing professional sports cannot seriously be viewed as a charitable activity *on its own*." *County Br.* at 34 (emphasis added).

But that is precisely the point. SMRTL's testing of professional athletes isn't done *on its own*. And activities viewed in isolation are neither charitable nor uncharitable. *SMRTL Br.* at 43. While the Agencies claim incredulity that SMRTL's testing of professional athletes is charitable activity, SMRTL's testing of professional athletes is characterized as charitable activity for federal tax purposes, and for purposes of the state income tax administered *by the Commission*, because it contributes importantly to accomplishing SMRTL's charitable purposes. *SMRTL Br.* at 10, 26.

The Agencies' arguments also rest on their misunderstanding of the relevant legal terms. The County, for example, erroneously suggests there is something wrong with a nonprofit "earning a 'profit.'" *County Br.* at 29. But as explained above, *supra* p.4, earning a "profit" is consistent with nonprofit status. The distinguishing factor between nonprofit and for-profit entities is the *purpose* the income serves—*i.e.*, the nonprofit's aims or the owners' financial interests. If purpose did not matter, there would be no difference between the Make-A-Wish Foundation and a radio station ticket giveaway.

The Court should reject the Agencies' invitation to set aside purpose as the central inquiry, given the term's inclusion in the constitution and the *purpose* underlying it.

B. Testing Professional Athletes Furthers SMRTL's Charitable Purposes.

As SMRTL demonstrated in its principal brief, *SMRTL Br.* at 10, 43–44, testing professional athletes serves an integral role in SMRTL's charitable mission. That matter is also undisputed. Whether the testing of professional athletes causally contributes to

SMRTL's advancement of its charitable purposes is a fact question. The evidence SMRTL provided in that regard was not countered in the underlying proceeding. All questions of fact were also deemed undisputed by the Commission. R.504. Accordingly, it is an undisputed fact that the services SMRTL provides to professional athletes causally contribute to SMRTL's achievement and fulfillment of its charitable purposes.

The Agencies nevertheless attempt to persuade this Court that it is the other way around. According to the County, "SMRTL primarily uses the property to service professional sports organizations" and "professional sports drive every facet of SMRTL's operations." *County Br.* at 1, 5; *see also Comm'n Br.* at 21. Those claims are contrary to the undisputed facts. Moreover, the facts the Agencies marshal in an attempt to substantiate this claim merely prove SMRTL's case.

For example, the Commission argues that "[SMRTL's] product testing and scientific research stem from trends it observes in the ... testing it does for pro sports." *Comm'n Br.* at 21; *County Br.* at 5. The Agencies also observe that after identifying data from testing professional athletes, SMRTL was able to "perform[] a nationwide study and publish[] a research paper in the Journal of American Medical Association ('JAMA') that highlighted a number of over-the-counter products that were masquerading as supplements even though they contained a dangerous class of drugs." R.498; *see County Br.* at 5–6. This example does not weaken SMRTL's case but rather strengthens it—illustrating one of the many ways in which SMRTL's testing of professional athletes contributes importantly to SMRTL's charitable purposes.

Similarly, the County points to an article reporting that after a professional athlete tested positive for a selective androgen receptor modulator, SMRTL investigated, tested the products he was using, and discovered contaminants in over-the-counter multivitamins. *County Br.* at 5; R.902–909. The article explains that SMRTL has full-time staff members testing "products ranging from unregulated supplements to heavily regulated prescription medication" and that SMRTL discovers contaminants in products that had previously gone undetected. R.903. The County's takeaway is that "SMRTL cleared the fighter," *County Br.* at 5, but in actuality it was public interest in health and safety that won. As the article demonstrates, testing professional athletes contributes importantly to achieving SMRTL's charitable purposes.

The Agencies also highlight that most of SMRTL's testing revenue comes from testing professional athletes.[10] *Comm'n Br.* at 19, *County Br.* at 4. Again, this only confirms that the tens of thousands of other tests SMRTL performs annually are heavily discounted or free and are thus provided at a substantial imbalance to charitable recipients.

The fact that there is no substantial imbalance between SMRTL and professional sports leagues is irrelevant. This Court has recognized that the imbalance need only be between the charity and charitable recipients: "The material reciprocity requirement ... does not weigh all the monies received from all sources … [versus] the cost of the services

[10] The County also mistakenly asserts that "most of SMRTL's clients are for-profit clients." *County Br.* at 45. But SMRTL has over 100 government and nonprofit clients, compared to only a few for-profit clients. R.501, 894–98. As the County notes, SMRTL provides substantial discounted testing (with annual discounts exceeding $1 million) to the United States Anti-Doping Agency ("USADA"), which itself is exempt under IRC § 501(c)(3). *County Br.* at 7; R.771; *SMRTL Br.* at 8.

provided …. Such a test would be useless because it could not be satisfied *by any viable charitable entity*." *Yorgason*, 714 P.2d at 662–63 (emphasis added). Instead, the Court looks at "the transactions between the provider … and the recipient …. If ... the transactions are not market transactions but result in a material flow of wealth to the recipient, then a gift is present …." *Yorgason*, 714 P.2d at 662–63; *see also County Br.* at 26, 29 (substantial imbalance need only be between charity and charitable recipient).

There is plentiful, uncontroverted evidence that SMRTL's testing of professional athletes contributes to SMRTL's advancement of its charitable purposes.

C. Federal Tax Treatment of Unrelated Business Income Is Consistent with This Court's Construction of the Charitable Use Exemption.

The standard found in federal tax law is widely recognized as the test for assessing whether a charitable entity's revenue-raising activity is, itself, charitable. *SMRTL Br.* at 41–42. That standard has also been widely incorporated into Utah tax law, and it focuses on whether revenue-raising activities are substantially related to the entity's charitable purposes. *Id.* The County refers to this standard as the "UBI test," which asks "whether the activities ... contribute importantly to the accomplishment of exempt purposes." *County Br.* at 35, 38. Under this test, for example, a business substantially related to educational purposes, such as a University bookstore, would be characterized as engaging in activities for educational purposes under the constitutional exemption.

Should this Court clarify that this standard applies under Utah law, a federal determination regarding a business's relatedness would be highly informative but not determinative for property tax purposes. The determination of relatedness would still need

to be made under state law. But the Commission's experience applying the unrelated-business doctrine in the context of both income and sales tax suggests the Commission could apply the doctrine in the property tax context.

Opposing application of this standard, however, the Agencies assert federal UBI law is inconsistent with Utah property tax standards. *County Br.* at 36 n.28; *Comm'n Br.* at 34 n.9. The Agencies' arguments rest on misunderstandings of federal law.

1. Federal Law Regarding Rental and Real Estate Investment Income Is Consistent with This Court's Precedent.

As the County points out, *County Br.* at 36 n.28, neither rental income nor real estate investment income is generally taxed as UBI. The County thus points to *Parker*, in which using property to generate rental income did not satisfy the exclusive charitable use exemption. On that basis, the County asserts federal UBI law is inconsistent with this Court's precedent. It is not.

Under federal law, income from real estate rentals and sales *does* constitute income from an unrelated trade or business—*i.e.*, business "not substantially related ... to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis of its exemption." IRC § 513(a); *see also id*. § 512(a), (b). However, rents and investment income are often excluded from UBI taxation under a series of exemptions called "modifications." IRC § 512(b)(3), (5). The modifications are not unlike the many exemptions from sales tax under Utah law where, for example, sales of aviation fuel, syringes, prosthetic devices, machinery, etc., can be

exempt from sales tax. Utah Code § 59-12-104. Similarly, income from certain unrelated businesses (such as rental income) is often excluded from UBI taxation.[11]

Federal UBI standards regarding whether use of property is substantially related to exempt purposes are thus consistent with *Parker*.

2. The Federal UBI Standard Is Consistent with a Strict Construction of the Exclusive Charitable Use Provision.

The Agencies also assert the federal UBI standard is inconsistent with a strict construction of the exclusive charitable use provision. But, again, the Agencies' arguments are misplaced. Application of the federal standard would not, as the Agencies suggest, permit non-charitable entities or entities engaged in substantial non-charitable activities to qualify their property as tax exempt.

The Agencies' arguments are premised, in large part, on misunderstandings of the relevant terminology. As SMRTL explained, not every nonprofit is charitable. While a trade or business substantially related to a charitable nonprofit organization's purposes is by definition charitable, the same cannot be said for a business substantially related to a non-charitable (though tax-exempt) organization's purposes. The County is thus correct that "[j]ust because income from a trade or business run *by a non-profit* is not considered UBI, that should not automatically qualify that trade or business as *charitable*." *County Br.*

[11] There are situations, however, such as the provision of low-income housing, in which rental income from the operation of a business can be substantially related to an entity's charitable purposes. *See, e.g.,* IRS Revenue Procedure 96-32, 1996-1 CB 717 at § 1.01 (setting forth standards "under which organizations that provide low-income housing will be considered charitable as described in section 501(c)(3) of the Internal Revenue Code because they relieve the poor and distressed").

at 34–35 (emphases added); *see also, e.g.*, *id*. at 35 ("[J]ust because a business or trade furthers an *IRS exempt purpose* does not mean that should be considered furthering a *charitable* one") (emphases added). But that does not suggest the federal UBI standard is inconsistent with Utah's exclusive charitable use exemption.

Under the UBI standard, the principle is that engagement in a related trade or business does not change the character of the organization's use of its property. When an organization is charitable, its related activity is *by definition* charitable because it contributes importantly to accomplishing the organization's charitable purposes. *See SMRTL Br.* at 41; Treas. Reg. § 1.513-1(d). This principle is fully consistent with Utah law and with a principle-based reading of the exclusive charitable use exemption.

The Agencies also attempt to draw a convoluted distinction between federal standards and the rule announced in *Loyal Order of Moose*. *Comm'n Br.* at 24; *County Br.* at 16. But the purported distinction does not exist. The federal standard is not materially different from the standard this Court has applied. *See SMRTL Br.* at 44.

The Agencies note that in *Loyal Order of Moose* the Court rejected an equivalence between used "exclusively" and used "primarily" for charitable purposes, and the Agencies note that the federal regulations interpret "exclusively" to mean "primarily." *Comm'n Br*. at 24–25. But this seeming incongruence relies on a superficial analysis of federal law. In *Loyal Order of Moose* this Court ultimately settled on used "exclusively" meaning not more than a "de minimus" non-qualified use. *Loyal Order of Moose*, 657 P.2d at 263. Similarly, under federal law, engaging "primarily" in activities that accomplish exempt purposes means no "more than an insubstantial part" of the activities are not in furtherance

of exempt purposes. 26 C.F.R. § 1.501(c)(3)-1(c)(1). The federal "primarily" standard thus mirrors the meaning given "exclusive use" in *Loyal Order of Moose*. To be used "exclusively" in state/federal law means that not more than a de minimus/insubstantial part of the use may be unrelated to exempt purposes. The two standards are congruent.

Moreover, as SMRTL pointed out, any difference between "primary" and "de minimis" is irrelevant in this case because *all* of SMRTL's activities contribute importantly to its charitable purposes.[12] *SMRTL Br.* at 44.

D. The Agencies Misread *Eyring Research*.

The Agencies also rely heavily on *Eyring Research* in support of their position. *See Eyring Research Institute, Inc. v. Tax Commission*, 598 P.2d 1348 (Utah 1979). But as SMRTL previously demonstrated, *SMRTL Br.* at 39–40, the ruling in *Eyring Research* is inapposite.

The Agencies' discussions of *Eyring Research* reveal the distinctions between Eyring Research Institute ("ERI") and SMRTL. As the County notes, ERI was a "non-profit ... exempt from federal taxation" whose activities "were not charitable." *County Br.* at 36; see also *County Br.* at 43–45 (referring to ERI as "the non-profit"). The Commission likewise refers to ERI as a "nonprofit research entity." *Comm'n Br.* at 20. The Agencies' language merely reiterates the tautology that non-charitable activities are not charitable. ERI was "exempt from federal taxation" and existed "for the advancement and extension

[12] The Commission's assertion that SMRTL failed to show testing of professional athletes "was a de minimis portion of its work" is thus also irrelevant. *Comm'n Br.* at 12–13, 20.

of scientific knowledge." *Eyring Research*, 598 P.2d at 1350. But the Court's decision does not indicate that ERI's federal tax exemption was based on furthering *charitable* purposes.

The Agencies also note that both ERI and SMRTL perform scientific research and both provide a significant amount of services to the government. But while ERI conducted scientific research, it was not motivated by a charitable purpose, such as public safety. This lack of motivating purpose was illustrated because ERI benefitted the public "only incidentally," as much of ERI's research was kept secret and might "reach the public only when, and if, the client passe[d] [it] on through the channels of commerce." *Eyring Research*, 598 P.2d at 1352. Moreover, ERI neither lessened government burdens nor provided a substantial imbalance to charitable recipients. Its fees charged to government entities were not "substantially, or even noticeably, lower than fees charged by private, profit-making research organizations." *Id.* at 1350. In contrast, SMRTL presented uncontradicted evidence that it is motivated by public safety, publishes all of its research, lessens government burdens, and provides services at a substantial imbalance.

E. The Hospital Cases Demonstrate That Providing Services at Non-Discounted Rates Can Constitute Charitable Activity.

This Court's precedent upholding property tax exemptions for nonprofit hospitals is also inexplicable unless revenue-raising activity substantially related to charitable purposes is charitable activity. *See SMRTL Br.* at 42–43. The Agencies' positions cannot be reconciled with the nonprofit hospitals' exemptions upheld in *Howell*.

1. Nonprofit Hospitals Generate Substantial Revenue by Providing Services at Market Rates.

The similarities between SMRTL and nonprofit hospitals are telling. Both provide services at a substantial imbalance. SMRTL provides tens of thousands of discounted and free tests annually to government and nonprofit entities. Nonprofit hospitals provide "indigent healthcare." *Comm'n Br.* at 32; *County Br.* at 18 n.9.

Both SMRTL and nonprofit hospitals also provide services for a fee. SMRTL tests professional athletes, and hospitals provide healthcare services at market rates. The Commission denies these similarities, arguing "there is no record evidence" regarding hospitals and asserting "there is no evidence about what any exempt hospitals are charging their patients" or "what percentage of hospital services are free or discounted." *Comm'n Br.* at 7, 46.

The Commission might have a point if it were conceivably the case that providing services at market rates was only a de minimis use of nonprofit hospital property. Hospital exemptions could then be consistent with the Agencies' view that (1) charging market rates is "a noncharitable use," and (2) property is not exempt if "more than a de minimis amount of [activity] on the property [is] at full market rates." *Comm'n Br.* at 6.

But the Agencies' wish for an easy way out cannot be granted. Common knowledge, experience, and this Court's precedent show that nonprofit hospitals provide more than a de minimis amount of care at market rates. In *IHC* the Court observed that "the vast majority of the services provided by these two hospitals are paid for," and the transactions "[do] not constitute giving, but [are] a mere reciprocal exchange of services for money."

IHC at 274. Indeed, "the value of the services given away as charity by these two hospitals constituted less than one percent of their gross revenues." *Id.* Yet the Court concluded that "either through the nonreciprocal provision of services or through the alleviation of a government burden," the hospitals could "demonstrate their eligibility for constitutionally permissible tax exemptions." *Id*. at 278.

Later, in *Howell*, when the hospitals' exemptions were upheld, the hospitals had demonstrated they provided some level of indigent care but otherwise the facts remained largely the same. The assessors contended that, as a factual matter, "the amount of free care provided to the indigent is de minimis in comparison to the amount of the wholly or partially reimbursed care provided by the hospitals." *Howell,* 881 P.2d at 889 n.20. The Court did not disagree but nevertheless found the hospitals "fulfill a charitable purpose and provide a gift to the community." *Id*.

The County's position that any non de minimis raising of revenue defeats the exclusive use requirement, *County Br.* at 41, is clearly inconsistent with *Howell* and with this Court's observation that "a hospital can charge patients who have the ability to pay a fee sufficient to recover the cost of providing charitable care." 881 P.2d at 888–89. As *Howell* makes clear, substantial fee-for-service activity does not, standing alone, bar application of the exclusive charitable use exemption.

2. Caselaw Regarding Nonprofit Hospitals Is Relevant.

The County states five times in a single page that hospitals are simply "unique," *County Br.* at 40—perhaps hoping the Court will limit *Howell* to its facts and require all other property owners to meet a much more onerous standard. But the similarities between

SMRTL and nonprofit hospitals show that the issues raised in *IHC* and *Howell* are not unique to the provision of healthcare.

This Court's decisions in *IHC* and *Howell* demonstrate that this Court's caselaw is not yet sufficiently developed to address present day questions pertaining to exclusive charitable use. The standards announced in *IHC* are insufficiently helpful to guide the analysis, and it is unclear when or how they might apply. This Court has not revisited the exclusive charitable use provision since *Howell*, and thus has not fleshed out how the standard in *Loyal Order of Moose* was altered in *IHC* and whether the factors and standards announced in *IHC* continue to matter. The legislature and Commission, however, have made it explicit that in the contexts of sales and income tax, revenue-generating activities substantially related to exempt purposes are tax exempt. *SMRTL Br*. at 42.

Nonprofit hospitals are not unique, but this Court's caselaw requires development with respect to the standards that allow those organizations to qualify as tax exempt. Under any such standard, given the similarities between the two, SMRTL will also qualify as using its property exclusively for charitable purposes.

V. SMRTL's Property Is Exempt Because It Was Under Construction, Rather Than Vacant, at the Relevant Time.

"[T]he commencement of construction qualifies the property for tax exemption." *Corporation of Episcopal Church v. Tax Comm'n*, 919 P.2d 556, 560 (Utah 1996). The Agencies overlook this rule when asserting SMRTL's property could not qualify as exempt because it was not yet being used for charitable purposes. *See Comm'n Br.* at 22; *County Br.* at 49. In *Episcopal Church*, a church sought exemption of vacant undeveloped property

on which it held two hours of religious services in the year and "did not begin construction of a building or commence any other sort of improvement" prior to the property tax lien date. 919 P.2d at 557. That is not the case here. *See SMRTL Br.* at 45 n.9. "Construction" of a building indicates "the property is 'irrevocably committed' to [an exempt] use, not simply held for future development." *See Episcopal Church*, 919 P.2d at 560.[13]

VI. If Prior Case Law Bars a Grant of SMRTL's Application, This Court Should Revisit Its Decisions and Construe the Constitutional Language in Accordance with Its Original Public Meaning

As SMRTL demonstrated in its opening brief, if this Court interprets its caselaw as barring a grant of SMRTL's exemption application ("Application"), this Court should revisit its construction of the exclusive charitable use provision. That provision, when given its original public meaning, encompasses SMRTL's use of its property. The Agencies oppose SMRTL's request, claiming the request is unpreserved, inadequately briefed, and unpersuasive. In each respect, the Agencies' arguments lack merit.

A. SMRTL's Request Is Properly Before This Court.

The Agencies first claim SMRTL's request is unpreserved. *Comm'n Br.* at 3; *County Br.* at 8, 46. This argument reflects a misunderstanding of the preservation doctrine. Preservation requires a party to present an issue to the district court or administrative agency "in such a way that the court [or agency] has an opportunity to rule on it." *See State*

[13] The Agencies' arguments regarding how much of SMRTL's property is *presently* being used, *Comm'n Br.* at 6, is likewise irrelevant. Witness testimony regarding subsequent use of a particular portion the building, years after construction was completed, is irrelevant to whether SMRTL's application should have been granted when the property was under construction.

v. Johnson, 2022 UT 14, ¶ 53, 508 P.3d 100 (brackets, citation, and internal quotation marks omitted). In the earlier proceedings in this case, the Commission has no authority to revisit this Court's construction of article XIII, section 3. Accordingly, neither judicial economy nor principles of fairness are implicated by this Court's consideration of the matter in the first instance. *See id.* ¶ 56; *Est. of Faucheaux v. City of Provo*, 2019 UT 41, ¶ 35 n.13, 449 P.3d 112.

In addition, the preservation doctrine requires preservation of issues—not arguments pertaining to those issues. *Id.* ¶ 53. The issue SMRTL raised in the administrative proceedings was whether SMRTL's property is tax exempt under article XIII, section 3. SMRTL's arguments focused on the meaning and application of the constitutional language. On review before this Court, SMRTL's arguments likewise address the meaning and application of article XIII, section 3.

The authority SMRTL now presents bears directly on that question. This Court "routinely consider[s] new authority relevant to issues that have properly been preserved, and [it has] never prevented a party from raising controlling authority that directly bears upon a properly preserved issue." *Hand v. State*, 2020 UT 8, ¶ 6, 459 P.3d 1014 (citation and internal quotation marks omitted). SMRTL's request that this Court revisit its construction of the exclusive charitable use provision is thus properly before this Court.

In their second argument, the Agencies claim SMRTL's request to revisit the meaning and application of article XIII, section 3 is inadequately briefed. *Comm'n Br.* at 47–48; *County Br.* at 48. Again, the Agencies are incorrect.

SMRTL devoted five full pages of its briefing to the stare decisis analysis, showing this Court's precedent has not worked well in practice, is outdated based on changes in the law, is too unpredictable to give rise to reliance interests, is not grounded in constitutional principles, has developed through a series of irreconcilable decisions, and is so opaque the Commission simply disregarded this Court's multifactor test in the underlying proceeding. *SMRTL Br.* at 46–51.

Asserting this analysis is inadequate, the County claims SMRTL should have requested that a specific aspect of this Court's precedent be overruled. *County Br.* at 47. But the County misunderstands SMRTL's request. This Court may tweak its interpretation of precedent absent a stare decisis analysis. But should this Court conclude its precedent bars a grant of SMRTL's Application, SMRTL asks this Court to *adopt a different framework* for construing the constitutional language—*i.e.*, to interpret the constitutional language in accordance with its original public meaning.

With respect to the constitutional language's original public meaning, SMRTL incorporated arguments presented throughout its brief, which demonstrate what the people of Utah would have understood the exclusive charitable use provision to mean. *SMRTL Br.* at 53. SMRTL also addressed the relevant case law, identified the original language in the Utah Constitution, detailed the provision's frequent reenactment, demonstrated how "exclusive" and "charitable" have historically been understood, and thus showed that the principles the people of Utah enacted in article XIII, section 3 require that SMRTL's Application be granted. *SMRTL Br.* at 51–52.

SMRTL has therefore adequately briefed its argument regarding the provision's original public meaning. *See Rose v. Off. of Prof'l Conduct*, 2017 UT 50, ¶ 64, 424 P.3d 134 (explaining that a brief should "contain the [appellant's] contentions and reasons … with respect to the issue presented with citations to the authorities, statutes, and parts of the record relied on" (ellipsis, internal quotation marks, and citation omitted)).

Yet SMRTL also recognized that fully exploring the original public meaning of the exclusive charitable use provision would require far more space than the 14,000 words allotted. *SMRTL Br.* at 53 n.10. Full exploration of the question would also impose a substantial burden on all parties to this proceeding—SMRTL, the County, and the Commission. Given the constraints and burdens faced by parties raising novel questions of state constitutional law, it has been this Court's practice to provide focused requests for additional argument through a supplemental briefing order. Such orders highlight specific questions the Court perceives as critical to its analysis, if a novel question of constitutional law is adequately raised, the question is important to the jurisprudence of the state, and the Court is potentially inclined to reach the question.[14]

SMRTL therefore indicated, in its opening brief, that should the Court seek additional information with respect to this novel and important question of constitutional law, SMRTL would welcome the opportunity to provide it. SMRTL also indicated that, if

[14] Parties willing to undertake the extraordinary burden of fully exploring novel questions of constitutional law may have little insight, at the time of briefing, whether the Court will be inclined to engage in that analysis and will often lack sufficient guidance as to the specific questions on which the Court might wish the parties to focus.

the Court would benefit from additional discussion of the stare decisis question, SMRTL would be willing to further address it. SMRTL's recognition that the Court might benefit from additional exploration of these issues in no way suggests that the discussion SMRTL provided is inadequate.[15]

B. This Court's Decisions Construing Article XIII, Section 3 Are Entitled to Little Weight.

The Agencies also claim this Court's construction of article XIII, section 3 should not be revisited. But the Agencies fail to mount a meaningful defense of this Court's precedent, particularly given their inability to agree on the standards that precedent provides. The Agencies' arguments rest on different readings of this Court's caselaw, attempt to fill in the blanks in this Court's reasoning, and request that the Court take this opportunity to explain what its precedent means.

For example, the Commission and the County are not on the same page as to the meaning and application of this Court's multifactor test. The Commission summarizes the test as "articulat[ing] *some* useful considerations that *may* be relevant to whether the facts of *certain* cases show a property is used exclusively for charitable purposes." *Comm'n Br.* at 42 (emphases added). That statement alone demonstrates how little guidance and predictability the test provides. The statement also explains why the test was completely

[15] The County similarly claims SMRTL's argument is unpreserved because "SMRTL did not include [it] in its issue statement." *County Br.* at 46. Again, the County is mistaken. SMRTL's issue statement asks whether the Commission erred in concluding SMRTL's Property is not tax exempt. The Commission erred if denial of SMRTL's Application is unconstitutional. Moreover, the County cites no authority suggesting issue statements are narrowly construed and/or limit the arguments that may be raised in the briefing.

disregarded by the Commission. *See SMRTL Br.* at 49. The County takes a different approach, stating that "several of the factors *are* relevant to determining whether the [constitutional provision's] requirements have been met." *County Br.* at 28 (emphasis added). The County acknowledges, however, lack of clarity as to whether or how certain factors might apply. *County Br.* at 28 n.21.

The County then identifies another deficiency in this Court's case law. *County Br.* at 29. The County asserts this Court's precedent is inconsistent "as to whether both or only one of the Government Benefit and Substantial Imbalance requirements" must be met. *County Br.* at 29. The County asks for clarification. *County Br.* at 29. The County also claims three requirements must be satisfied to establish an activity is charitable. *County Br.* at 23. But the Commission does not join in that assertion nor take a position on whether it is accurate. *Comm'n Br.* at 42 n.14. The Agencies' arguments thus demonstrate the mystifying nature of this Court's caselaw.

Regarding this Court's inconsistency with respect to nonprofit hospitals, the County points to a small part of the Court's analysis in *IHC* and suggests the record was different the second time around. *County Br.* at 39. The County also claims the record must have been different in other respects because otherwise the decisions would be inconsistent. *County Br.* at 39 & n.30. Yet the County points to nothing in *Howell* that suggests such differences, which is telling, given that the *Howell* Court did note the minor difference to which the County points.

The Commission nevertheless suggests this Court has applied a consistent standard with respect to "exclusive" use since 1982 when, in *Loyal Order of Moose*, this Court

overhauled its prior caselaw. *Comm'n Br.* at 49. But the Commission's argument is not well founded.

There is no bright line separating this Court's caselaw addressing "exclusive" versus "charitable" use. *See, e.g.*, *Yorgason*, 714 P.2d at 656 ("[W]hat qualifies *as a purpose exclusively charitable* is subject to judgment in the light of changing community mores." (emphasis added) (citation and internal quotation marks omitted)). This Court also altered its approach to exclusive charitable use in *IHC*, writing that its multifactor test applies when assessing whether a property is used *exclusively* for charitable purposes. *IHC*, 709 P.2d at 269 (announcing factors that "must be weighed in determining whether a particular institution is … using its property '*exclusively* for ... charitable purposes.'" (emphasis added) (citation omitted)). Indeed, that is precisely how the Commission summarized *IHC*—as "articulat[ing] ... considerations that may be relevant to whether … a property is used *exclusively* for charitable purposes." *Comm'n Br.* at 42 (emphasis added).

Indeed, this case illustrates the overlap in the inquiries. The question is whether activities substantially related to charitable purposes fall within the exclusive charitable use exemption—an inquiry at the intersection of "charitable" and "exclusive" use. There is no consistent caselaw on that matter. There is also presently no clarity as to what exclusive charitable use means. *IHC* altered the meaning of exclusive charitable use announced just a few years earlier in *Loyal Order of Moose*, which altered the meaning of exclusive charitable use applied prior to that time. *Howell* then cast doubt on the meaning and application of the test announced in *IHC*. And no body of law has since been developed

creating a reliable, deeply embedded, well-founded set of principles for assessing exclusive charitable use under article XIII, section 3.

Accordingly, as demonstrated in SMRTL's opening brief, if current caselaw bars the grant of SMRTL's application, this Court should consider the question anew.

C. The People of Utah Understand the Charitable Use Exemption to Encompass SMRTL's Use of Its Property.

Finally, the Agencies contend the original public meaning of exclusive charitable use would not encompass SMRTL's use of its Property. *Comm'n Br.* at 51–55; *County Br.* at 47–49. But the Agencies fail to engage with the showing SMRTL made, which demonstrates the people of Utah understand "charitable" as a broad concept, which has long been interpreted to include activities substantially related to charitable purposes. Accordingly, property cannot be taxed if the use of the property is substantially related to accomplishing charitable purposes, as is the case here.

The County argues otherwise, asserting this Court's precedent has been a model of clarity following *Loyal Order of Moose* and, since that time, the people of Utah would have understood they were enacting the principles announced in that decision. *County Br.* at 48. In part, the County's point has merit. This Court's precedent is a factor to consider when assessing what the people of Utah would have understood the constitutional language to mean. But there is no singular, established understanding of this Court's precedent the people of Utah could collectively have enacted.

As explained above, and as the Commission's, the County's, and SMRTL's differing interpretations of this Court's precedent illustrate, even if the people of Utah were

closely following this Court's caselaw, they would not have come away with clear principles regarding the meaning of the constitutional language. At a minimum, they would not have developed a shared understanding regarding the principles that govern the circumstances present here.

That is, in part, why the County's argument misses the mark. The inquiry here is what the constitutional language means when the questions of charitable and exclusive use intersect. The best evidence of what the people of Utah would understand the constitutional language to mean, in this context, comes from well-settled understandings of charitable in a legal sense and exclusive charitable use in the tax context. As SMRTL established in its principal brief, Utah law broadly defines charity as a gift to the community and reflects generally accepted notions of charitable use. *SMRTL Br.* at 16–26. As SMRTL also established, tax law has long incorporated—in Utah, under federal law, and in other states—the principle that activity substantially related to charitable purposes is charitable activity and thus tax exempt. *SMRTL Br.* at 41–42.

The Commission's arguments fare no better. The Commission asserts SMRTL was required to point to a single year as determinative in the original public meaning analysis or to conclusively show that 2017 is the relevant dot on the timeline. *Comm'n Br.* at 51–54. But SMRTL made a more compelling point. The broad notion of charitable use has been consistent over time, it incorporates evolving notions of charitable use, and state and federal tax law have long recognized that activities substantially related to exempt purposes bear the same character as the exempt purposes they advance. Thus, when reenacting the constitutional language over the past several decades, including in 2017, the voters of Utah

would have held a shared understanding of the well-settled principle that activities substantially related to charity are themselves charitable for purposes of assessing taxes.

CONCLUSION

For the foregoing reasons, SMRTL respectfully requests that the Commission's Order be overruled and that this Court grant SMRTL's application for a property tax exemption for 2020.

DATED this 16th day of February, 2024.

RAY QUINNEY & NEBEKER P.C.

/s/ Samuel A. Lambert
Samuel A. Lambert
Bruce L. Olson
Attorneys for Petitioner Sports Medicine Research and Testing Laboratory

CERTIFICATE OF COMPLIANCE

1) I hereby certify that this brief contains 12,782 words, excluding the parts of the brief exempted by Rule 24(g)(2). In addition, pursuant to Rule 24(a)(11)(A), the word processing system used to prepare the brief (Microsoft Word) has been relied upon to determine the word count.

2) I hereby certify that this brief complies with Utah R. App. P. 21(h) governing public and private records.

DATED this 16th day of February, 2024.

RAY QUINNEY & NEBEKER P.C.

/s/ Samuel A. Lambert
Samuel A. Lambert

Attorneys for Petitioner Sports Medicine Research and Testing Laboratory

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February 2024, true and correct copies of this **REPLY BRIEF OF PETITIONER** were delivered via email to:

Counsel for Respondent, Utah State Tax Commission

Erin Middleton — emiddleton@agutah.gov
Assistant Solicitor General

Michelle Lombardi — mlombardi@agutah.gov
Assistant Attorney General

Laron Lind — llind@agutah.gov
Assistant Attorney General

Counsel for Respondent, Utah State Tax Commission

Bradley C. Johnson — bcjohnson@slco.org
Deputy District Attorney

Timothy A. Bodily — tbodily@slco.org
Deputy District Attorney

/s/ Samuel A. Lambert

ADDENDUM

(1) Bruce Hopkins, *The Law of Tax-Exempt Organizations* (12th ed. 2019) Excerpt

(2) Utah State Tax Commission Property Tax Exemptions Standards of Practice

a. § 2.13.6 Religious Purpose

b. Non-profit Hospital and Nursing Home Charitable Property Tax Exemption Standards, Appendix 2B

The Law of Tax-Exempt Organizations

TWELFTH EDITION

BRUCE R. HOPKINS

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CHAPTER ONE

Definition of and Rationales for Tax-Exempt Organizations

Nearly all federal and state law pertains, directly or indirectly, to tax-exempt organizations; there are few areas of law that have no bearing whatsoever on these entities. The fields of federal law that directly apply to exempt organizations include tax exemption and charitable giving requirements, and the laws concerning antitrust, contracts, education, employee benefits, the environment, estate planning, health care, housing, labor, political campaigns, the postal system, securities, and fundraising for charitable and political purposes. The aspects of state law concerning exempt organizations are much the same as the federal ones, along with laws pertaining to the formation and operation of corporations and trusts, insurance, real estate, and charitable solicitation acts. Both levels of government have much constitutional and administrative law directly applicable to exempt organizations. A vast array of other civil and criminal laws likewise applies. The principal focus of this book is the federal tax law as it applies to nonprofit organizations.

§ 1.1 DEFINITION OF *NONPROFIT ORGANIZATION*

A tax-exempt organization is a unique entity; among its features is the fact that it is (with few exceptions) a nonprofit organization. Most of the laws that pertain to the concept and creation of a nonprofit organization originate at the state level, while most laws concerning tax exemption are generated at the federal level. Although almost every nonprofit entity is incorporated or otherwise formed under state law, a few nonprofit organizations are chartered by federal statute. The nonprofit

organizations that are the chief focus from a federal tax law standpoint are corporations, trusts, and unincorporated associations. There may also, however, be use of limited liability companies in this regard.

A nonprofit organization is not necessarily a tax-exempt organization. To be exempt, a nonprofit organization must meet certain criteria. As noted, most of these criteria are established under federal law. State law, however, may embody additional criteria; those rules can differ in relation to the tax from which exemption is sought (such as taxes on income, sales of goods or services, use of property, tangible personal property, intangible personal property, or real property).[1] Thus, nonprofit organizations can be taxable entities, under both federal and state law.[2]

(a) *Nonprofit Organization* Defined

The term *nonprofit organization* does not refer to an organization that is prohibited by law from earning a *profit* (that is, an excess of earnings over expenses). In fact, it is quite common for nonprofit organizations to generate profits. Rather, the definition of nonprofit organization essentially relates to requirements as to what must be done with the profits earned or otherwise received.

The legal concept of a nonprofit organization is best understood through a comparison with a *for-profit* organization. The essential difference between nonprofit and for-profit organizations is reflected in the private inurement doctrine.[3] Nonetheless, the characteristics of the two categories of organizations are often identical, in that both mandate a legal form,[4] one or more directors or trustees, and usually officers; both of these types of entities can have employees (and thus pay compensation), face essentially the same expenses, make investments, enter into contracts, sue and be sued, produce goods and/or services, and, as noted, generate profits.[5]

A fundamental distinction between the two entities is that the for-profit organization has owners who hold the equity in the enterprise, such as stockholders of a corporation. The for-profit organization is operated for the benefit of its owners; the profits of the business undertaking are passed through to them, such as by the payment of dividends on shares of stock. That is what is meant by the term *for-profit* organization: It is one that is designed to generate a profit for its owners. The transfer of the profits from the organization to its owners is the inurement of net earnings to them in their private capacity.

[1]In establishing its criteria for tax exemption, however, a state may not develop rules that are discriminatory to the extent that they unconstitutionally burden interstate commerce (Camps Newfound/Owatonna, Inc. v. Town of Harrison, et al., 520 U.S. 564 (1997)). See *Constitutional Law*, Chapter 3.

[2]An illustration of the use of a taxable nonprofit corporation is in IRS Private Letter Ruling (Priv. Ltr. Rul.) 201722004.

[3]See Chapter 20.

[4]See § 4.1.

[5]The word *nonprofit* should not be confused with the term *not-for-profit* (although it often is). The former describes a type of organization; the latter describes a type of activity. For example, in the federal income tax setting, expenses associated with a not-for-profit activity (namely, one conducted without the requisite profit motive) are not deductible as business expenses (IRC § 183).

By contrast, a nonprofit organization generally is not permitted to distribute its profits (net earnings) to those who control it (such as directors and officers).[6] (A nonprofit organization rarely has owners.[7]) Simply stated, a nonprofit organization is an entity that cannot lawfully engage in private inurement. Consequently, the private inurement doctrine is the substantive defining characteristic that distinguishes nonprofit organizations from for-profit organizations for purposes of the federal tax law.

In addition to the prohibition on private inurement, several state nonprofit corporation acts require the nonprofit entity to devote its profits to ends that are beneficial to society or the public, such as purposes that are classified as agricultural, arts promotion, athletic, beneficial, benevolent, cemetery, charitable, civic, cultural, debt management, educational, eleemosynary, fire control, fraternal, health promotion, horticultural, literary, musical, mutual improvement, natural resources protection, patriotic, political, professional, religious, research, scientific, and/or social.[8]

(b) Nonprofit Sector

Essential to an understanding of the nonprofit organization is appreciation of the concept of the *nonprofit sector* of society. This sector of society has been termed, among other titles, the *independent sector*, the *third sector*, the *voluntary sector*, and the *philanthropic sector.*

A tenet of political philosophy is that a democratic state—or, as it is sometimes termed, civil society—has three sectors. These sectors contain institutions and organizations that are governmental, for-profit, and nonprofit in nature. Thus, in the United States, the governmental sector includes the branches, departments, agencies, and bureaus of the federal, state, and local governments; the class of for-profit entities comprises the business, trade, professional, and commercial segment of society; and nonprofit entities constitute the balance of this society. The nonprofit sector is seen as being essential to the maintenance of freedom for individuals and a bulwark against the excesses of the other two sectors, particularly the governmental sector.

[6]The U.S. Supreme Court wrote that a "nonprofit entity is ordinarily understood to differ from a for-profit corporation principally because it 'is barred from distributing its net earnings, if any, to individuals who exercise control over it, such as members, officers, directors, or trustees'" (Camps Newfound/Owatonna, Inc. v. Town of Harrison, et al., 520 U.S. 564, 585 (1997)). Other discussions by the Court concerning nonprofit organizations are in Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2768–2772 (2014), and Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 344–346 (1987) (concurring opinion).

[7]A few states allow nonprofit organizations to issue stock. This is done as an ownership (and control) mechanism only; this type of stock does not carry with it any rights to earnings (such as dividends). Ownership of this type of stock does not preclude federal tax exemption, although the IRS occasionally rules to the contrary (e.g., Priv. Ltr. Rul. 201835009).

[8]Use of the word *corporation* in the law context usually means both nonprofit and for-profit corporations (e.g., Medical College of Wisconsin Affiliated Hosps., Inc. v. United States, 854 F.3d 930 (7th Cir. 2017); United States v. Detroit Medical Center, 833 F.3d 671 (6th Cir. 2016); Maimonides Medical Center v. United States, 809 F.3d 85 (2nd Cir. 2015); Charleston Area Med. Center v. United States, 2018 BL 271879 (Ct. Fed. Cl., July 31, 2018); and Wichita Center for Graduate Medical Education v. United States, 2017 BL 438284 (D. Kan., Dec. 7, 2017).

Property Tax Exemptions

Standards of Practice

2

Utah State Tax Commission
Property Tax Division
Rev. April 25, 2023

(Utah 1979)], [Yorgason v. County Bd. of Equalization, 714 P.2d 653 (Utah 1986)] and [Petitioner v. County Board of Equalization of County 1 (UTC Appeal No. 15-1569)]

These tests could help determine if a nonprofit entity meets the first criteria in 2.13.4 "Charitable Purpose Criteria"

2.13.6 Religious Purpose

"Religion" has not been defined by legislative or judicial action. The BOE has no authority or responsibility to define religious use. If the applicant has a religious exemption under IRS 501(c)(3), then an exemption should be granted unless available information indicates that use of the facility is contrary to the organization's purpose.

2.13.7 Homes of Clergy

Parsonages, rectories, monasteries, homes and residences of the clergy, if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

- The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a 501(c)(3) organization and continues to meet the requirements of that section;
- The building is occupied by persons whose full-time efforts are devoted to the religious organization and the immediate families of such persons; and
- The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

Monasteries and other religious residences for more than one persona qualify for those parts exclusively used for religious purposes. (R884-24P-40)

2.13.8 Vacant Land

Land which is not actively used by the religious, charitable, or educational organization, is not deemed to be devoted exclusively to religious purposes, and therefore not exempt from property taxes.

Vacant land which is held for future development or utilization by a religious organization may not be deemed to be devoted exclusively to exempt purposes, and therefore not tax exempt, until either construction commences or a building permit is issued for construction of improvements that are intended for exclusive use. (R884-24P-40)

Appendix 2B

Nonprofit Hospital and Nursing Home Charitable Property Tax Exemption Standards

An analysis of the charitable purpose tests established in Utah County v. Intermountain Health Care Inc., *(709 P2d 265), 1985*

Standard I

The institution owning the property for which the exemptions is sought must establish that it is organized on a non-profit basis to (a) provide hospital or nursing home care, (b) promote health care, or (c) provide health related assistance to the general public. The institution's property must be dedicated to its charitable purpose, and upon dissolution its assets must be distributable only for exempt purposes under Utah law, or to the government for a public purpose.

Comments

An institution needs to show that it is properly organized and operating in good standing under appropriate Utah law governing non-profit organizations. Instruments of organization and operation should reflect the health care-related purpose for which the institution is organized and contain the appropriate limitations on asset distribution.

Standard II

The institution owning the property for which the exemption is sought must establish that none of its net earnings and no donations made to it inures to the benefit of private shareholders or other individuals, as the private inurement standard has been interpreted under § 501(c)(3) of the Internal Revenue Code.

Comments

Compliance with and operation under the provisions of § 501(c)(3) creates a rebuttable presumption that an institution's operations are reasonable. An institution is required to provide the following: (a) signed statements and financial statements showing all revenue and expenditures and describing the uses to which revenue has been put, and the amount, nature and uses of donated funds; (b) proof of federal tax exempt status under § 501(c)(3) of the Internal Revenue Code; (c) signed statement or other evidence that payments made to officers, employees, contractors and suppliers are reasonable and not a covert means of making payments to private persons.

Standard III

The institution owning the property for which the exemption is sought must establish: (a) that it admits and treats members of the public without regard to race, religion or gender, (b) that hospital or nursing home service, including admission to the institution, is based on the clinical judgment of the physician and not upon the patient's financial ability or inability to pay for services, and (c) that indigent persons who, in the judgment of the admitting physician, require the service generally available at the hospital or nursing home, receive those services for no charge or for a reduced charge, in accordance with their ability to pay. The institution must also provide evidence of its efforts to affirmatively inform the public of its open access policy and the availability of services for the indigent.

Comments

The open access requirements outlined in this standard must be established as a formalized policy of the institution. More importantly, however, are the efforts of the institution to inform the public of the open-access policy. This requirement is particularly important with regard to services for the indigent. The exempt institution must provide evidence of its efforts to affirmatively inform the public of the availability of these services.

Standard IV

The institution owning the property for which the exemption is sought must establish that its policies integrate and reflect the public interest. A rebuttable presumption of compliance with this standard is assumed if it is shown that (a) the institution's governing board has a broad based membership from the community served by the institution, as required by federal tax law, (b) the institution confers at least annually with the county board of equalization or its designee concerning the community's clinical hospital needs that might be appropriately addressed by the institution, and (c) the institution establishes and maintains a "charity plan" to ensure compliance with Standard III and Standard IV. However all policy decisions relating to the institution's governance and operations shall remain under the direction of the institution's governing body.

Comments

Judicial decisions on property tax exemptions highlight the importance of charitable institutions contributing to the common good. In addition, the courts have indicated that charitableness must require an element of "gift" and has stated that such a gift may be met through the lessening of a governmental responsibility. In meeting this standard, the membership and operation of governing boards is important. Governing boards should have a broad based membership and function in a generally open atmosphere. Where governing boards of individual institutions are part of a larger corporate structure, there must also be evidence that the corporate board incorporates the interest of individual governing boards into its policies. There should also be a showing that exempt institutions seek to address the health care needs of the community. The standard imposes a requirement that the institution confer at least annually with county officials to assess the clinical hospital needs of the community, which might be addressed by the institution. In addition, the institution must develop a "charity plan" to ensure compliance with Standard III (the open-access requirement) and Standard IV (the public interest requirement). Two important points of caution: First, the term "community" may well be narrower or broader than an individual county's geographic boundaries. Efforts to meet charitable standards are not disqualified simply because they involve rendering services outside a specific county's boundaries or to non-residents of a specific county. Second, all policy decisions relating to the governance and operation of the institution are ultimately under the direction of the institution's governing board. For example, a county may not require as a condition of exemption that a nonprofit hospital fund specific programs.

Standard V

The institution owning the property for which exemption is sought must establish that its total gift to the community exceeds on an annual basis its property tax liability for that year. The Utah Supreme Court has defined "gift to the community" as follows: "A gift to the community can be identified either by a substantial imbalance in the exchange between the charity and the recipient of its services or in the lessening of a government burden through the charity's operation." [Utah County v. Intermountain Health Care, Inc., 709 P. 2d 265, 269 (Utah 1985)]

The following quantifiable activities and services are to be counted towards the nonprofit entity's total gift to the community:

- **Indigent care** – The reasonable value of the hospital's unreimbursed care to medically indigent patients. The term "medically indigent" refers generally to patients who are financially unable to pay for the cost of the care they receive. Measurement: The value of the institution's unreimbursed care to patients, as measured by standard charges, reduced by the average of reductions afforded to all patients who are not covered by government entitlement programs, plus expenses directly associated with special indigent clinics.
- Community education and service – The reasonable value of volunteer and community service (including education and research) rendered for and by the hospital or nursing home. Measurement: unreimbursed expense. "Unreimbursed expense" is defined as the identifiable costs and expenses incurred by an institution in performing a specific service, including any overhead attributable to the service, less any reimbursement for the service from recipients, government or any other source. Overhead does include any capital costs for buildings or equipment unless purchased or built solely for the activity in question. Community education does not include in-house training for employees.
- **Medical discounts** – The reasonable value of unreimbursed care for patients covered by Medicare, Medicaid, or other similar government entitlement programs. Measurement: The difference between (a) standard charges, as reduced by the average of reductions afforded to all patients who are not covered by government entitlement programs, and (b) actual reimbursement.
- **Donations of time** – The reasonable value of volunteer assistance donated by individuals to a nonprofit hospital or nursing home. Measurement: Volunteer hours times a reasonable rate for services performed.
- **Donations of money** – The value of monetary donations given to a nonprofit hospital or nursing home. Measurement: Where donations are spent on depreciable items, the value of the gift should be amortized over the useful life of facilities purchased; where donations are spent on patient care and non-depreciable items, the full amount of the donations should be counted in the year of donation; and where donations are retained and invested, annual capital appreciation from the donation should be counted towards the gift.

The institution's charitable gift to the community also includes the community value, whether or not precisely quantifiable, of (a) the operation of tertiary care units or other critical services or programs that may not otherwise be offered to the community, or (b) the continued operation of hospitals where revenues are insufficient to cover costs, such as a primary care hospital in a rural community.

Comments

Standard V outlines general categories of qualifying activities. It is not meant as an exhaustive listing. Institutions seeking exemption are required to show: (a) accounting data establishing the amount and value of unreimbursed care to medically indigent persons, and subsidized patients; (b) accounting data establishing the unreimbursed value of community education and service programs, including research and professional education programs; (c) accounting data establishing the amount and uses of volunteer time and donated funds; and (d) descriptions of intangible or unquantifiable community gifts. Standard V does not specify how those activities classified as intangible or unquantifiable are to be measured. That issue will be examined on a case-by-case basis.

Standard VI

Satellite health-care facilities and centralized support facilities are entitled to property tax exemption if it is shown that such facilities enhance and improve the governing hospital's mission. These facilities should be tested as part of the hospital or nursing home that operates the support facility.

Comments

Property tax exemption standards should not mandate operational inefficiencies. Where it is shown that a nonprofit facility better meets its stated mission through the existence of these facilities they may be included in the governing hospital or nursing home's exemption. The exemption does not apply to off-site facilities, which are not directly related to the specific mission of the institution, such as individual physicians' offices.