In the Supreme Court of the State of Utah

Sports Medicine Research and Testing Laboratory, Petitioner, v. Board of Equalization of Salt Lake County, State of Utah, and Utah State Tax Commission, Respondents.	No. 20220786-SC

Brief of Respondent Utah State Tax Commission

On Petition for Review of a Final Decision of the Utah State Tax Commission, Appeal No. 20-1618

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List of Parties

Parties before the Tax Commission:

The parties below appeared before the Utah State Tax Commission:

Petitioner Sports Medicine Research and Testing Laboratory, represented by Samuel A. Lambert and Bruce Olson of Ray Quinney and Nebeker P.C.

Respondent Board of Equalization of Salt Lake County, represented by Bradley C. Johson and Timothy A. Bodily of the Salt Lake County District Attorney's Office.

Parties on Petition for Review:

The above parties are also parties before this Court. In addition, the Utah State Tax Commission, represented by Erin Middleton and Michelle Lombardi of the Utah Attorney General's Office, is a respondent.

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Introduction

The issue in this case is whether property is tax exempt when it is mostly used for work done at market rates for professional sports leagues. Under Utah's Constitution, owners owe a property tax proportionate to the fair market value of their property unless they can show the property is exempt. A nonprofit's property is exempt from that tax only if the property is "used exclusively" for charitable purposes.

This exemption is construed narrowly, and for good reason. Property taxes fund local government. When property is exempt from taxation, the tax rates of the remaining nonexempt property owners increase to cover the revenue needed to pay those costs. To justify that shift, it is not enough for an entity to engage in some—or even a substantial amount of—charitable activities on the property. The charitable use must be exclusive.

Sports Medicine Research and Testing Laboratory (SMRTL) is a nonprofit drug testing laboratory. It provides testing to detect the presence of performance-enhancing substances in elite professional and amateur athletes, as well as for some government groups whose employees may have similar incentives to use performance-enhancing substances. As beneficial as SMRTL's work may be, SMRTL does not exclusively use its property for charitable purposes because SMRTL does most of its testing for the National Football League (NFL) and Major League Baseball (MLB), hardly entities

needing charity. The Commission correctly held that SMRTL's commercial testing for pro sports meant the property was not used exclusively for charitable purposes. This Court should affirm.

Statement of Issues

Issue 1: Whether the Commission correctly held SMRTL's property is ineligible for the exemption because SMRTL does not use it exclusively for charitable purposes when it does more than 50% of its testing for professional sports leagues.

Preservation: SMRTL preserved its arguments on this issue. R. 399-435; Pet. Br. at 3.

Standard of Review: By statute, this Court grants the Commission deference on its findings of fact and applies a substantial evidence standard of review. Utah Code § 59-1-610(1). The Court applies a correction of error standard to the Commission's conclusions of law. *Id.*

The statute is silent about the standard of review that applies to mixed questions of law and fact. *Decker Lake Ventures, LLC v. Utah State Tax Comm'n,* 2015 UT 66, ¶ 11, 356 P.3d 1243. This Court uses its traditional mixed question framework to determine the appropriate standard of review. *Id.* Mixed questions that are fact-like merit deferential review, while questions that are law-like merit no deference. *Id.* ¶ 12. To determine whether a mixed question is law-like or fact-like, the Court evaluates "'the

nature of the issue and the marginal costs and benefits of a less deferential, more heavy-handed appellate touch." *Id.* (internal quotation marks omitted). If the mixed question presented "is fact-intensive and unlikely to result in the development of appellate precedent necessary to guide parties in future cases," the Court "yields substantial deference" to the Commission. *Id.*

This case involves both questions of law and mixed questions of law and fact. The Commission's interpretation of the property tax exemption is a legal conclusion reviewed for correctness. Utah Code § 59-1-610(1)(a). The Commission's application of law to the facts is a mixed question. *See Decker Lake,* 2015 UT 66, ¶ 11. In this case, the mixed question is fact-like and should be given deference. Whether a taxpayer is entitled to the charitable use exemption depends on the application of several guidelines to the case-specific facts about how the property owner uses its property. *See Utah Cnty. v. Intermountain Health Care, Inc.*, 709 P.2d 265, 270 (Utah 1985); *Eyring Rsch. Inst., Inc. v. Tax Comm'n of Utah*, 598 P.2d 1348, 1351 (Utah 1979).

Issue 2: Whether SMRTL has met its substantial burden to show this Court should overturn its prior case law and conduct a new analysis of the meaning of Utah's charitable use exemption.

Preservation: SMRTL does not list this issue in its issue statement, so it does not identify where it was preserved. The Commission agrees with the

Board of Equalization of Salt Lake County (the County) that SMRTL did not raise this issue below.

Standard of Review: There is no decision on this issue for this Court to review. The Court interprets its case law and provisions of the Utah Constitution as a matter of law. *Durbano Props., LC v. Utah State Tax Comm'n,* 2023 UT 6, ¶ 9, 529 P.3d 348.

Statement of the Case

The Commission joins and incorporates the statement of facts from the County's brief. To those facts, the Commission adds the following procedural history.

SMRTL filed an Exemption Application for tax year 2020 claiming its property was exempt from property tax because it was exclusively used for charitable and educational purposes. R. 18. The County denied that exemption, and SMRTL requested review by the Commission. R. 2, 474. The Commission held a formal hearing on SMRTL's claim. R. 494.

Before the Commission, the County argued SMRTL's property was not exempt because SMRTL's focus on professional sports leagues meant that the property was not used exclusively for charitable purposes. R. 366-374. SMRTL did not dispute that it did substantial work for professional sports. Its own evidence showed that more than half of its testing fees and volume came from testing it performed for the NFL and MLB. *See* R. 501-02. SMRTL

argued it still qualified for the exemption because that work was necessary for its other charitable activities, including research, discounted testing for college athletes and certain government entities, and potential testing for a future Utah Olympics. R. 419, 433-44.

The Commission found SMRTL did not meet its burden to show its property was used exclusively for charitable purposes because "significantly more than half of SMRTL's testing revenue for the fiscal year ending June 30, 2020 came from SMRTL charging full price for the tests it provided to professional sports leagues." R. 502. The Commission was not persuaded by SMRTL's claims that the exemption was justified by research and discounted testing, finding SMRTL had not presented specific evidence about how many times SMRTL had discovered dangerous products, how many times it had notified the public about those products, or how many times SMRTL had reported dangerous products to government agencies. R. 498. SMRTL also did not provide a list of the pro bono work it did for government agencies, quantify the value of the work it donated to them, or calculate how much of a subsidy it provided to any organizations, or keep track of the tests it performed for free. R. 498-99, 501. The Commission thus found "there was a lack of quantifiable data on the actual amount of the gift provided by SMRTL to any given agency, individual, or organization." R. 500.

The Commission found SMRTL was ineligible for the exemption because more than a de minimis amount of the work it did on the property was at full market rates for professional sports, a noncharitable use. R. 507-08. The Commission also determined that some of SMRTL's property wasn't being used at all based on the testimony of SMRTL's president that part of the building was vacant in anticipation of the possible return of the Olympics to Salt Lake City. R. 321; R. 507 n.54. SMRTL appeals the Commission's decision.

Summary of Argument

The Commission correctly found that SMRTL did not use its property exclusively for charitable purposes when it performs more than half of its testing at market rates for professional sports. Property is only exempt from Utah's property tax if it is not only owned by a nonprofit entity but also used exclusively for charitable purposes. That exemption is strictly construed. SMRTL has not met its burden to show it is entitled to it.

SMRTL's property was not used exclusively for charitable purposes. Property is used exclusively if it is used only for charitable activities; any noncharitable activities must be de minimis. The Court adopted this standard after older cases strayed from the constitutional text and granted exemptions too liberally in the name of charity. Here, SMRTL cannot show that it used its property exclusively for charitable purposes because it

performed more than half of its testing for professional sports. Vacant property held in case Salt Lake City hosts the Olympics 14 years from the lien date also should not be treated as "used exclusively" for charitable purposes.

SMRTL cannot show that its professional sports testing qualifies as charitable because it is related to its other charitable endeavors. This argument is covered in the County's brief, which the Commission joins except as stated. The Commission writes separately on this issue to emphasize that the broad definitions of "charitable" in federal income tax and other statutes do not apply to the unique burden-shifting framework of the property tax exemption. SMRTL also cannot rely on hospitals and Olympic entities to justify an exemption because there is no record evidence about them.

Finally, this Court should reject SMRTL's request to overrule its case law if it is going to rule against SMRTL. SMRTL has not met its heavy burden to show that this Court's precedent is not entitled to stare decisis respect, or that it contradicts the constitutional exemption. This Court should affirm.

Joinder with the County's Brief

The Commission joins and incorporates the arguments made by the County in Sections I, III, IV and V of its brief. The Commission writes

separately here to defend its decision and raise additional points related to its interests.

Argument

This Court should affirm the Commission's decision that SMRTL's property was not used exclusively for charitable purposes when more than half of SMRTL's testing is performed for professional sports leagues. This Court should also decline SMRTL's invitation to overturn the Court's body of caselaw so that SMRTL can escape its property tax obligation.

I. SMRTL did not show its property was used exclusively for charitable purposes.

Under Utah's Constitution, "all tangible property in the State that is not exempt under the laws of the United States or under [Utah's] Constitution" shall be assessed at a rate "in proportion to its fair market value" and "taxed at a uniform and equal rate." Utah Const. art. XIII, § 2(1). But "property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes" is exempt from property tax. Utah Const. art. XIII, § 3(1)(f). Utah's Property Tax Act (the Act) incorporates this same exemption. Utah Code § 59-2-1101(3)(a)(iv) (2020).

Under both the statute and Constitution, "taxation of all tangible property is the rule and the exemption is the exception." *Eyring Rsch. Inst., Inc. v. Tax Comm'n*, 598 P.2d 1348, 1350 (Utah 1979). The property owner

claiming the exemption thus has the burden to show that it is entitled to it. *Id.* at 1350-1351; *Parker v. Quinn*, 64 P.961, 961 Utah 1901). The owner must show that it is a nonprofit, that it uses its property for charitable purposes, and that the charitable use is exclusive. *See* Utah Const. art. XIII, § 3(1)(f).

Here, there is no dispute that SMRTL is a nonprofit entity. The issue is whether SMRTL used its property exclusively for charitable purposes for the 2020 tax year. The Commission correctly found that SMRTL did not satisfy those requirements. Before turning to them, the Commission addresses the strict construction standard that applies to the exemption.

A. Property tax exemptions are strictly construed.

The charitable use exemption, like all exemptions, is strictly construed. *Loyal Order of Moose, No. 529 v. Cnty. Bd. of Equalization*, 657 P.2d 257, 261 (Utah 1982). Property taxes help fund the costs of government. *See Intermountain*, 709 P.2d at 278 (identifying "tax-supported public services" used by exempt and nonexempt property owners). They pay for public schools, law enforcement, fire protection, emergency response, water, sewers, and roads. *See id.; see also* R. 941 (showing SMRTL's taxing entities included Jordan School District, Salt Lake County, SL County Library, and a sewer and water district).

Those government services benefit all members of the community—individuals and corporations alike. Utah's Constitution thus requires

property owners to pay their proportionate share of those services. *Friendship Manor Corp. v. Tax Comm'n*,487 P.2d 1272, 1277 (Utah 1971) ("every species of property within the state should bear its equal proportion of the burdens of government.") (*quoting Parker*, 64 P. at 961).

When property is exempt, the owner does not share the costs of government services even though the owner still benefits from them. But more than that, exemptions "place[] a greater burden on nonexempt taxpayers." *Intermountain*, 709 P.2d at 268 (quoting Comment, *Real Estate Tax Exemption for Fed. Subsidized Housing Corps.*, 64 Minn. L. Rev. 1094, 1096-97 (1980)); *see also Salt Lake Cnty. v. Tax Comm'n*, 658 P.2d 1192, 1197 (Utah 1983) (Oaks, J. concurring) ("[W]e cannot be unaware of the impact of charitable exemptions on taxpayers who must thereby bear an increased burden of funding the revenue needs of government."). That is because the remaining taxpayers will pay higher tax rates to cover the shortfall from the exempt property.

Property taxes do not work like other taxes that use a flat rate. The property tax due is calculated by multiplying the "certified tax rate" by a property's assessed taxable value. *See* Utah Const. art. XIII, § 2(1) (requiring nonexempt property to be assessed and taxed at "uniform and equal" rates); Utah Code § 59-2-924(1)(g), (4)(a) (defining certified tax rate); *see also* R. 941 (showing tax rates and resulting taxes). The certified tax rate is designed to

produce "the same" property tax revenue "as was budgeted by that taxing entity for the prior year," plus new growth.[1] Utah Code § 59-2-924(1)(g), (4)(b). The calculation to arrive at that rate is determined by statute and is more detailed than necessary for purposes of this brief.[2] *See* Utah Code § 59-2-924(4). Basically, the certified tax rate is set by dividing the budgeted revenue for the prior year by the aggregate taxable property value in the taxing jurisdiction. *See* Utah Code § 59-2-924(4)(b). But the aggregate taxable value only includes assessed taxable property. *Id.* § 59-2-924(1)(c).

Because the rates are based on the division of a fixed budgetary amount by the total assessed taxable property value, there is an inverse relationship between them. The tax rate falls when the total aggregate taxable property values rise. And the rate rises when the total aggregate property values fall. The County's brief gives an example. Cnty. Br. at 11 n.4. If the entity's budgeted revenue is $1,000,000 and the aggregate taxable property values are $100,000,000, the tax rate will be 1% (1,000,000/100,000,000). But if the total assessed taxable value falls to

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[1] If a taxing entity wishes to impose taxes beyond the certified tax rate, it must satisfy certain legal requirements and hold public meetings about the proposed increase. Utah Code § 59-2-919(2), (3). It initiates that process by adopting a "tentative budget" and then notifying the county auditor that it intends to exceed the certified tax rate and the amount by which it intends to do so. *Id.* § 59-2-924.

[2] A spreadsheet with information about calculating the certified tax rate can be found at https://propertytax.utah.gov/tax-rates/ctr-calculation.pdf.

$85,000,000, the certified tax rate would increase to 1.011765% (1,000,000/85,000,000) because the County would still have to collect the same budgeted revenue of $1,000,000. *Id.*

Thus when property is exempt, the remaining taxpayers pay more to meet the entity's set budgetary needs. And the group of taxpayers who will bear the added burden is not limited to other owners of commercial buildings. Individual homeowners also pay higher tax rates on their property when the assessed values of commercial properties are lower. *Cf.* Katie McKellar, *The dark side of Utah's surging home values: An 'unprecedented' tax burden*, Deseret News (Aug. 9, 2022) (discussing the shift in tax burden from commercial properties to homeowners because assessed values of commercial properties remained low while residential values rose).

Given "the important policy consideration that the burdens of taxation should be shared equitably, the general rule is that the language of the exemption should be strictly construed." *Loyal Order of Moose*, 657 P.2d at 261. The language relied on for an exemption "should be so clear as not to admit of reasonable controversy about its meaning, for all doubts must be resolved against the exemption." *Parker*, 64 P. at 961; *see also Friendship Manor*, 487 P.2d at 1277. Construing the exemption too liberally requires other taxpayers to pay more than their equitable share to fund the local government.

B. Property is exempt only when it is used exclusively for charitable activities.

The Commission correctly found that SMRTL's property is not exempt because the commercial testing SMRTL does for professional sports means the property is not used exclusively for charitable purposes. For a taxpayer to be relieved of its duty to share the costs of government, it must show more than that it is organized for a charitable purpose. *Yorgason v. Cnty. Bd. of Equalization ex rel. Episcopal Mgm't Corp.*, 714 P.2d 653, 657 (Utah 1986). It "is the use to which the real property is put, not the nature of the owning organization" that determines "whether or not the property is exempt as being used exclusively for charitable purposes." *Id.* The "used exclusively" language is thus "the pivotal phrase" in Utah's constitutional exemption. *Corp. of Episcopal Church v. Utah State Tax Comm'n*, 919 P.2d 556, 558-59 (Utah 1996).

1. The meaning of "used exclusively."

There is no definition of the term "used exclusively" in the Constitution or any relevant property tax statute. This Court has defined an exclusive use as one to which the property "is singly or solely devoted." *Loyal Order of Moose*, 657 P.2d at 262. Exclusive use means the property must "be actually used or committed to a use that is exclusively" religious, charitable, or educational. *Corp. of Episcopal Church*, 919 P.2d at 558-59. Satisfying that

standard requires more than showing some, or even a substantial amount, of charitable activities occur on the premises. *Loyal Order of Moose*, 657 P.2d at 264. Any noncharitable use must be "de minimus" or "of true minor import" or it will defeat the exemption. *Id.*

This interpretation gives effect both to the meaning of exclusive and the constitutional recognition that charity may warrant tax relief. *Id.* at 262. The Court's definition of a single or sole use adheres to the plain meaning of the term "exclusive." *See* Black's Law Dictionary*,* exclusive, adj., (11th ed. 2019) ("1. Limited to a particular person, group, entity, or thing . . . 3. Whole; undivided); *Merriam-Webster*, exclusively, adv., def. (in an exclusive manner: in a way limited to a single person, group, category, method, etc.)[3]; *cf. Cambridge Dictionary*, exclusively, adv. ("only").[4]

At the same time, the Court has recognized it must read the exemption to preserve its purpose of allowing some charitable exemptions. *Loyal Order of Moose*, 657 P.2d at 263. That is why the Court has allowed for de minimis noncharitable activities. *Corp. of Episcopal Church,* 919 P.2d at 560. But that does not mean that the exemption should be construed to exempt property so long as some charitable activities occur there. To the contrary, the Court has cautioned that when "the non-charitable use rises to the level that it must be

[3] https://www.merriam-webster.com/dictionary/exclusive
[4] https://dictionary.cambridge.org/us/dictionary/english/exclusively

weighed against charitable use in order to determine which use is dominant, then clearly the noncharitable use is well beyond the point of de minimus and should unquestionably preclude an exemption." *Loyal Order of Moose*, 657 P.2d at 263.

2. History of the Court's interpretation of the exclusive use language.

This Court's history interpreting the exemption shows precisely why it should not be construed broadly in the name of charity. The Court originally interpreted the exclusive charitable use exemption[5] narrowly, holding that revenue-raising activities would defeat a charitable exemption even if the revenue was used to further the entity's charitable purposes. In *Parker*, a relief society—an entity that "was organized and act[ed] exclusively for charitable purposes" by ministering to "the poor, sick and destitute"—rented out a floor of its building. 64 P. at 962. The rent revenue "form[ed] a part of the sums disbursed" by the society for those charitable purposes. *Id.* at 961.

Although there was no dispute that the rent revenue supported the relief society's charitable work, the Court determined that renting the space

[5] The "used exclusively" language has been in Utah's Constitution from the beginning. The original Utah Constitution exempted from property tax "lots with the buildings thereon used exclusively for either religious worship or charitable purposes." Utah Const. art. XIII, § 3 (1895). The nonprofit requirement and educational purposes have since been added, but the phrase "used exclusively" for charitable purposes has remained the same. *Compare id. with* Utah Const. art. XIII, § 3(1)(f).

was not an exclusively charitable use. *Id.* at 962. It held the portion of the building used for rent was not exempt. *Id.* The Court, however, still allowed the exemption to be claimed for those parts of the building that were used exclusively for charitable purposes. *Id.* at 961; *see also Loyal Order of Moose,* 657 P.2d at 262 (discussing *Parker*). The Court later explained it allowed the exemption for the rest of the building because the parts of the building used for charitable and noncharitable purposes were easily divisible. *Loyal Order of Moose*, 657 P.2d at 262-63. The Court thus strictly construed the exemption, allowing it only to the extent the discreetly ascertainable portion of the property was used exclusively for charitable purposes and not revenue-raising ones.

Despite that early strict adherence to the exclusive use requirement, the Court's later cases gradually expanded the exemption beyond the text. *Loyal Order of Moose*, 657 P.2d at 263. In *Salt Lake Lodge No. 85, B.P.O.E. v. Groesbeck*, the Court worried that construing the exemption too narrowly would thwart its charitable purposes. 120 P. 192, 194 (Utah 1911); *see also Loyal Order of Moose*, 657 P.2d at 263 (discussing *Groesbeck*). It thus held that a fraternal organization could claim an exemption for its entire building because the benefit derived from social activities (including the sales of "liquors, cigars, and luncheons") was a "mere incident" to the charitable purposes. *Groesbeck*, 120 P. at 199. Contrary to what the Court said in

Parker, the Court determined that the exclusive use exemption should "receive a broad and more liberal construction" to encourage charitable activities. *Id.* at 194.

From there, the Court expanded the exclusive use language to allow an exemption "if the use of the property [was] *primarily* to engage in and foster" charitable activities. *Loyal Order of Moose*, 657 P.2d at 263. In *Benevolent and Protective Order of Elks No. 85 v. Tax Commission*, the Court held that a nonprofit organization could exempt its entire property because it engaged in various charitable activities along with revenue-raising ones. 536 P.2d 1214, 1218-19 (Utah 1975); *see also Loyal Order of Moose*, 536 P.2d at 263 (discussing *BPOE* and comparing BPOE's $300,000 in revenue with its $29,000 of charitable contributions).

Soon after, the Court began retreating from that broad interpretation. It denied a charitable exemption to a church-owned home the pastor used as a residence because a residence could not be "classified as used exclusively for religious worship." *Salt Lake Cnty. v. Tax Comm'n ex rel. Good Shepherd Lutheran Church*, 548 P.2d 630, 631 (Utah 1976). And it denied a fraternal order's exemption because the property was more of a social club than a "place used solely for religious or charitable purposes." *Baker v. One Piece of Improved Real Prop. at 607 East 200 South St.*, 570 P.2d 1023, 1025 (Utah 1977).

This retreat culminated in *Loyal Order of Moose* with the Court's proclamation that it would return to a strict construction of the exclusive use language. The Court recognized its earlier cases had "occasionally paid lip service" to the "exclusive use" language, but those cases had stretched the exemption beyond its clear meaning. 657 P.2d at 263. The Court overturned the "broadened interpretations" from those cases and declared a "return to the standard enunciated in *Parker v. Quinn*." *Id.*

In announcing this return, the Court acknowledged its responsibility to balance both the plain meaning of "used exclusively" with the "constitutional and legislative intent" to grant certain charitable exemptions. *Loyal Order of Moose*, 657 P.2d at 262. It preserved both by holding that "inadvertent or extremely minor non-charitable uses of property do not foreclose an exemption." *Id.*

The Court has since reiterated that commitment to strict construction of the exemption. *Corp. of the Episcopal Church*, 919 P.2d at 560 n.5 (reiterating that the Court had overruled "cases that liberally construed 'exclusively' to mean 'dominant' or 'primary'" and "returned to the strict construction of 'exclusively'" from *Parker*); *Intermountain*, 709 P.2d at 269 (declaring the Court's "commitment to the doctrine of strict construction as applied to the charitable exemption provision" and distinguishing Utah from

jurisdictions that only pay "lip service" to the exclusive use requirement). That same standard applies here.

3. SMRTL's property is not exclusively used for charitable purposes.

Applying this Court's standard for used exclusively, the Commission found that SMRTL did not meet the exclusive use test "because a more than de minimis portion of its activities" were not charitable. R. 507. There were two reasons for that determination. First, the Commission found that more than half of SMRTL's testing was for professional sports leagues. Second, part of SMRTL's building was vacant and thus not being used at all.

a. More than half of SMRTL's testing is for professional sports.

First, the Commission held SMRTL's property was not used exclusively for charity because most of its testing was for professional sports, which the Commission determined was not charitable. R. 508. That finding was supported by substantial evidence. SMRTL produced an exhibit showing that for fiscal year 2020, it had performed 38,848 market rate tests compared to 36,863 tests at a discounted rate. R. 501, 893. So too, "more than half of SMRTL's testing revenue" for fiscal year 2020 came from "charging full price for the tests it provided to professional sports leagues." R. 502. The evidence specifically showed that the NFL accounted for 29.3% of SMRTL's testing fees and the MLB accounted for 38.7% of the total testing fees. R. 500-01.

SMRTL failed to show this commercial testing was a de minimis portion of its work. While it provided some free testing, SMRTL conceded it did not keep track of those tests, R. 501, nor did it calculate the value of the subsidy it provided on its discounted tests, R. 499. On the research front, SMRTL also failed to present any specific evidence about how many times SMRTL had discovered dangerous products, how many times it had notified the public of those products, or how many times SMRTL had reported dangerous products to government agencies. R. 498.

SMRTL cannot show it is entitled to the exemption despite its work for professional sports by arguing that it uses those revenues to support its research and discounted testing activities. That is the same argument this Court rejected in *Parker*, where a relief society also used the revenue it earned to subsidize its charitable work. 64 P. at 961-962. Unlike *Parker*, however, the Commission found that SMRTL's noncharitable activities aren't performed in a discrete part of the building that can be separately valued. R. 507-08.

Eyring also rejected a similar exemption request. That Court held that a nonprofit research entity was not entitled to an exemption because, among other factors, "[a]lmost half" of its "research efforts were expended for the Department of Defense in areas not recognized as charitable." *Eyring*, 598 P.2d at 1351. The Court also found that the entity's research efforts focused

on "a discrete and ascertainable number of individual clients" and the "public [was] benefitted only incidentally." *Id.* at 1352. So despite the entity's stated purpose, the Court found that its "chief preoccupation" was actually "the satisfaction of its individual customers." *Id.* at 1350; *see also* R. 509 & n.57 (discussing *Eyring* factors).

So too here. More than half of SMRTL's drug testing is market-price testing for pro sports leagues. If *Eyring's* testing for the Department of Defense failed to qualify as exclusive charitable use, 598 P.2d at 1352, professional sports testing should not qualify. What's more, most members of the public cannot directly benefit from SMRTL's testing. It focuses on a discrete number of clients because only those entities with a published anti-doping policy can use SMRTL's testing. R. 318 Tr. 120:1-16). And while SMRTL does perform research and discounted testing, those activities are driven by its work for professional sports. Cnty. Br. at 5. For instance, its product testing and scientific research stem from trends it observes in the commercial testing it does for pro sports. *See* R. 275-77 (testimony that SMRTL chooses what products to test based on what it sees in professional leagues); R. 245 (testimony that "a lot of the research" is driven by what SMRTL sees in pro sports).

The evidence shows that SMRTL's primary focus was on its work for professional sports. That is not de minimis use, and SMRTL is not entitled to the exemption.

b. Holding vacant space for future use is not a charitable purpose.

Second, the Commission found SMRTL's property is not exclusively used for charitable purposes because some of the building is vacant. R. 507 n.54. That, too, disqualifies SMRTL from the exemption.

SMRTL's president testified that its building has 80,000 square feet of lab space but that SMRTL does not "utilize the whole building right now." R. 321 (Tr. 123: 12-22); 495. Part of the building is vacant and being held for future use if the Olympics return to Salt Lake City. *Id.* But vacant property is not being used for charitable purposes, regardless of its intended future use. For example, this Court has held that a church's vacant lot was not being used exclusively for charitable purposes despite its intent to develop the lot in the future. *See Corp. of Episcopal Church*, 919 P.2d at 559.

To be sure, *Episcopal Church* addressed vacant land and not an empty part of a commercial building. Its reasoning and holding should still extend to the vacant space here. SMRTL may have charitable intentions for that space, but there is no evidence of a current commitment to use that space for a charitable purpose. *Episcopal Church*, 919 P.2d at 559. *Episcopal Church*

explained why that lack of commitment is a problem. Holding property for future development is a use of that property—although a nonexempt one. *Id.* at 559. Allowing an exemption solely for an intent to use property for a charitable purpose would allow exempt taxpayers to buy property for speculation and earning revenues, "all while remaining completely unburdened by property taxes." *Id.* at 559-60. There would be no safeguards that would allow a nonprofit to claim it was holding its space for a future charitable use, thus skirting payment for its proportionate share of government, and then later deciding to use that property for more profitable ventures.

SMRTL's interest in helping with the Olympics is laudable. And if Salt Lake City hosts them again and SMRTL uses that space for testing Olympic athletes, it could perhaps reassess whether it qualifies for an exemption during those years depending on how it is using the space. But SMRTL has not shown its plans for a future Olympics qualify for an exemption for 2020, 14 years before the anticipated Olympics and 3 years before the announcement that they had been conditionally awarded to Salt Lake City. Julie Jag and Blake Apgar, *The Olympics are coming back: Salt Lake City named preferred host for 2034 Winter Games*, SL Trib. (Nov. 29, 2023).[6]

[6] https://www.sltrib.com/sports/2023/11/29/games-are-coming-back-salt-lake/

SMRTL's vacant space was not being used for a charitable purpose as of the January 1, 2020 lien date, so its property is not entitled to the exemption.

4. SMRTL asks this Court to return to paying lip service to the exclusive use language.

SMRTL does not dispute that it performs most of its testing for pro sports, and it concedes that the exemption is strictly construed. Pet Br. at 22. Even so, its brief makes several arguments that ask this Court to return to paying lip service to the exclusive use requirement in the name of broadly promoting charity. This Court has already been down that road. *See supra* at 15-22. It should reject that approach now, just as it did before.

a. Exclusive use does not mean primary use.

SMRTL complains the Commission erred by interpreting exclusive use as "materially narrower than the federal standard." Pet. Br. at 44. It argues that the Commission should have instead interpreted that term to match a federal treasury regulation that applies to corporate income tax. *Id.* Under that regulation, an organization is operated exclusively for an exempt purpose "if it engages *primarily* in activities which accomplish" one of the specified 501(c)(3) activities. 26 C.F.R. § 1.501(c)(3)-1(c) (emphasis added).

That treasury regulation does not apply. It adopts the same definition of exclusive that this Court already rejected in *Loyal Order of Moose*. 657 P.2d at 263 (rejecting earlier cases extension of exemption "if the use of the

property has been *primarily* to engage in and foster activities which are charitable"). And it asks this Court to interpret exclusive to mean something it does not. *See id.* at 266 (Oaks, J. concurring) (noting prior decisions had allowed law to "drift from the verbal moorings of the Constitution until . . . the familiar word 'exclusively' . . . lost its literal meaning and [came] to mean something entirely different—'primarily'"). A nonprofit thus must show more than that it primarily uses its property for charitable purposes. It must show that it exclusively uses its property for them.

b. The test is not whether an entity solely uses its property for income.

SMRTL attempts to distinguish its case from *Parker* because it does not use any part of its property solely to earn income. Pet. Br. at 37. It argues that *Parker* means that a nonprofit cannot claim an exemption if it is using its property, or a discrete portion of it, solely to raise income unrelated to its other charitable activities. *Id.* at 37-38.

SMRTL's argument asks this Court to construe the text exactly backwards. The Constitution does not say a nonprofit entity's property is exempt unless some part of it is solely used to raise income for an unrelated business activity. It instead requires the property to be exclusively used for charitable purposes, even when it is owned by a nonprofit entity.

SMRTL also argues that the purpose of its activities is key. Pet. Br. at 43. This argument suffers from the same defect. The test for the exemption is not purpose or intent. *See Episcopal Church*, 919 P.2d at 559. If it were, the exemptions would have been allowed in both *Parker* and *Episcopal Church* where the intended use of the funds or vacant property was charity. The test that matters is how the property is used. *See Episcopal Church*, 919 P.2d at 560 ("[T]he exemption hinges on the actual use of the property."). And here SMRTL is using the property for professional sports testing that is beyond de minimis.

c. Exclusive use is not determined by a charitable offset.

SMRTL attempts to brush aside the Commission's determination that it had not quantified the amount of discounted testing or research efforts. Pet. Br. at 45. SMRTL argues that its use was exclusive and that any quantification requirement was met because the value of the discounted testing it offered to the U.S. Anti-Doping Agency exceeded the amount of its property tax. Pet. Br. at 46.

This Court has mentioned the amount of charity a nonprofit provides compared to its tax liability in the context of whether an activity is charitable. In *Yorgason*, the court noted eleven residents of the housing tower would have to be in nursing homes paid for by Medicare if they were not

housed in the tower, and that would have cost the government more than the tax it would realize by assessing the tower. 714 P.2d at 660. But while that offset might have been mentioned in connection with whether there was a gift to the community, it did not signify the tower's charitable use was exclusive. The tower met that requirement because "none of the tenants [were] able to fully pay for their needs" and "no tenant [began] to pay for the total cost of rental and services received." *Id.* at 559.

So while some cases may note the charity offsets the tax, that is not the test for exclusive use. Nor should it be. Otherwise, a nonprofit could engage in extensive noncharitable activities on its property so long as it provided a donation of services equal to the amount of its prospective property tax. Those services may well promote various purposes that benefit the community. But they would allow entities to pick-and-choose which causes to fund, all while leaving other taxpayers to cover the costs of the government services the nonprofit enjoys. That interpretation would depart from the exclusive use requirement of Utah's Constitution.

d. SMRTL is not held to a different standard because it is a 501(c)(3) entity.

SMRTL argues that its property is different from the property in *Loyal Order of Moose* and prior cases because SMRTL is a 501(c)(3) organization and not a fraternal club. *See* Pet. Br. at 38. It argues the fraternal orders and

unions from this Court's earlier cases were not exempt because they used their property for "inherently noncharitable uses" with a little charity on the side. *Id.*

SMRTL is correct that a substantial noncharitable use defeats the exemption. But its suggestion that its professional sports testing is somehow charitable income because it is a 501(c)(3) nonprofit is not supported by the text or the caselaw. An exemption will not be granted "merely because a 'non-profit' corporation is interposed between an entrepreneur and [its] customers even though the activity to which the enterprise is oriented is physically, mentally, or spiritually uplifting." *Salt Lake Cnty. v. Greater Salt Lake Recreational Facilities*, 596 P.2d 641, 644 (Utah 1979). In fact, both *Friendship Manor* and *Intermountain* determined that 501(c)(3) entities had not shown they were entitled to the exemption. *Friendship Manor*, 487 P.2d at 1274, 1280; *Intermountain*, 709 P.2d at 267, 278; *see also id.*, 709 P.2d at 280 (Stewart, J. dissenting) (noting both hospitals at issue were 501(c)(3) entities).

What's more, *Loyal Order of Moose* did not limit its exclusive use holding "to club houses and to fraternal and benevolent societies." Pet. Br. at 39 (quoting 657 P.2d at 261). It instead declared it was returning "to the standard enunciated in *Parker v. Quinn*," 657 P.2d at 264, a case that was not about a fraternal society but about an organization "organized and

[acting] exclusively for charitable purposes," *Parker*, 64 P. at 962. And the Court has since reiterated its commitment to that interpretation outside the context of fraternal orders and social organizations. It reiterated its adherence to strict construction in *Episcopal Church* and *Intermountain*. *Episcopal Church*, 919 P.2d at 560 & n.5; *Intermountain*, 709 P.2d at 268.

Regardless of the type of nonprofit, an entity must exclusively use the property for charitable purposes. Utah Const. art. XIII, § 3(1)(f). An entity's noncharitable activities will defeat the exemption unless those activities are de minimis. And as discussed above, SMRTL's professional sports testing activities are well beyond de minimis.

C. Professional sports testing is not charitable even if it supports research or discounted testing.

SMRTL argues its property was used exclusively for charitable purposes because its substantial work for the pro sports leagues relates to its research and discounted testing. Pet. Br. at 43. It relies heavily on definitions of charitable in other contexts, including federal corporate income tax law. Pet. Br. at 23-27. This Court should not use those definitions for what is charitable for property tax purposes. This Court should instead rely on the principles it has articulated in its own body of case law. SMRTL does not qualify for the exemption under that precedent.

1. Definitions of charitable in federal and other laws do not apply to the property tax exemption.

a. Federal income tax definitions do not apply.

SMRTL is a 501(c)(3) entity for federal income tax purposes. Its brief argues that means its property should also be exempt under Utah law. Pet. Br. at 19, 23-24, 26. Although a federal exemption might be a factor for consideration, "the fact that a person or entity is exempt from federal taxation under the Internal Revenue Code is not determinative of a claim for an exemption under Utah law." *Eyring*, 598 P.2d at 1351. That does not change because Utah has adopted the federal definition, or definitions like it, for income tax purposes.

i. The federal income tax exemption is broader than Utah's property tax exemption.

The definitions in Internal Revenue Code section 501(c)(3) do not resolve whether an entity is exempt from Utah's property tax. The I.R.C.'s focus is on how the entity is "organized and operated." I.R.C. § 501(c)(3). An entity's organization is relevant under Utah law, as shown by the requirement that only nonprofit organizations can claim the exemption. Utah Const. art. XIII, § 3(1)(f); *see also Friendship Manor*, 487 P.2d at 1276-77 (noting nonprofit organization is a necessary ingredient but not a determinative one). But the organization and operation of an entity is not the only requirement for Utah's property exemption. Even if an entity is a

nonprofit, the exclusive charitable use requirement must still be met. Utah Const. art. XIII, § 3(1)(f); *Yorgason*, 714 P.2d at 657;

Section 501(c)(3) is also not dispositive because its text is broader than Utah's constitutional property tax exemption. Utah's exemption for property owned by a nonprofit entity is limited to property used for three purposes: charitable, religious, and educational. Utah Const. art. XIII, § 3(1)(f). Section 501(c)(3) lists those purposes too, but it adds other categories. Those categories include entities organized for "scientific, testing for public safety, [or] literary . . . purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals." I.R.C. § 501(c)(3). Even on its face, there are more activities that would bring an entity within the sweep of section 501(c)(3). *Id.* SMRTL's business activities ostensibly fall within two of those broader categories: testing for public safety and fostering national or international sports competition*Id.*

This Court's cases reflect the narrower scope of Utah's exemption. The Court has rejected an exemption even though the taxpayer claimed it was a 501(c)(3) entity. *See Friendship Manor*, 487 P.2d at 1280; *Intermountain*, 709 P.2d at 267. And the cases where this Court has allowed the exemption fall within a narrower meaning of charity. It has allowed exemptions for

providing relief to the poor, housing for low-income and disabled individuals, and indigent healthcare. *See Parker,* 64. P. at 962 (granting exemption for part of building relief society used for ministering to the poor, destitute, and sick); *Yorgason,* 714 P.2d at 657, 661 (granting exemption for low-cost housing where no tenant paid full price after discussing public need for adequate housing); *Howell v. Cnty. Bd. of Cache Cnty. ex rel. IHC Hosps., Inc.*, 881 P.2d 880, 888 (Utah 1994) (allowing exemption to hospital because it provides indigent care state would otherwise have to provide). But it has denied exemptions for other nonprofit entities engaged in scientific research, recreation, and housing for seniors with financial means, all of which would—or did—qualify as nonprofits or federal tax-free enterprises. *Greater Salt Lake Recreational Facilities*, 596 P.2d at 644 (finding there was no charitable gift in recreational facility where the proceeds from the operation paid the facility's bonded indebtedness and management fee); *Eyring*, 598 P.2d at 1348 (denying exemption for nonprofit engaged in scientific research); *Friendship Manor*, 487 P.2d at 1280 (denying exemption for property used to provide housing and services to seniors who could pay for services).

ii. Income tax is different than property tax.

SMRTL argues that the legislature's use of the 501(c)(3) standards in state income tax provisions means the property tax exemption also must

incorporate the federal meaning of charitable. Pet. Br. at 24 (citing Utah Code § 59-7-102). But Utah's income and property taxes are not the same.

To begin, property tax and income tax are different because the legislature has more authority over income tax. Utah's Constitution gives the legislature discretion to impose taxes, "other than the property tax," and to permit "deductions, exemptions and offsets from those other taxes." Utah Const. art. XIII, § 4(1). But Utah's legislature does not have that same authority to grant property tax exemptions. Those exemptions are limited by the Constitution. Utah Const. art. XIII, §§ 2(1), 3.

Another reason income tax and property tax differ is the Constitution expressly authorizes the legislature to borrow federal definitions for income taxes. It says that "in a statute imposing an income tax" the legislature "may define the amount on which the tax is imposed" by reference to the "laws of the United States as from time to time amended," and may "modify or provide exemptions" to those federal provisions. *Id.* art. XIII, § 4(2). The Utah Constitution contains no such authorization for property taxes.

Consistent with that constitutional authority, the legislature has borrowed some definitions from federal law for Utah's income tax, starting with taxable income. Corporate income taxes are "based on the corporation's Utah taxable income for the taxable year." Utah Code § 59-7-104(1). Determining the amount of an entity's Utah taxable income begins with its

unadjusted income.[7] "Unadjusted income," in turn, is defined as "federal taxable income . . . as determined by the Internal Revenue Code, before the net operating loss deduction and special deductions." Utah Code § 59-7-101(33)(a).[8]

The determination of a corporation's Utah taxable income thus starts with its federal income. Because Utah's corporate income tax laws borrow from federal income tax at that foundational level, it makes sense the legislature would also account for the I.R.C.'s income tax exemptions, including those for exemptions for nonprofit entities. It also makes sense that Utah followed those same federal standards for taxable, unrelated business income for nonprofit corporations. *See* Utah Code §§ 59-7-801, -802.[9] The use of federal standards creates consistency between the two *income* tax

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[7] Utah taxable income is then calculated by making adjustments to the unadjusted income, including the enumerated additions and subtractions allowed under Utah law, and applying statutory provisions to determine the amount of income apportioned through formulary apportionment and allocated to Utah. *See* Utah Code §§ 59-7-105, -106, -204, -321.

[8] *See also See* Utah Corporation Franchise and Income Tax Return, Schedule A-Utah Net Taxable Income and Tax Calculation, line 1 (instructing taxpayer to identify "[U]nadjusted income/Loss before NOL and special deductions from federal from 1120, line 28"), a*vailable at* https://tax.utah.gov/forms/current/tc-20.pdf.

[9] For the reasons discussed by the County, unrelated business income also does not indicate whether a property has been used exclusively for charitable purposes. *See* Cnty. Br. at 34-37.

frameworks and simplifies the administration of Utah's income tax.[10] But there is no federal equivalent of Utah's property tax. And property taxes are not based on, or influenced by, what a taxpayer pays to the federal government. So there is no reason to assume those same federal standards have been incorporated into the property tax framework.

A final difference between property and income is how rates are set. Income tax rates are flat rates fixed by statute.[11] Those rates do not change based on what any other taxpayer may (or may not) owe. Nor do they guarantee the State gets a precise revenue figure. *See* Utah Const. art. XIII, § 5(1) (instructing legislature to provide "annual tax sufficient . . . to defray the estimated ordinary expenses of the State for each fiscal year"). But in the property tax system, an exact budget is the starting point and the assessors back into the rate from there. *See supra* at 9-12. When a property is excluded, the rates of the remaining taxpayers increase to cover those costs. *Id.*

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[10] Many states have adopted this methodology for both individual and corporate income tax as a matter of convenience for taxpayers and for state administrators. *Cf.* Statement for the Record of The Federation of Tax Administrators on "Hearing with IRS Commissioner Rettig on the 2022 Filing Season," United States House of Representatives, Committee on Ways and Means (Mar. 17, 2022), *at* 3-4 (discussing reasons for state use of federal definitions in individual income tax matters), https://taxadmin.memberclicks.net/assets/FTA%20SFR_House%20Ways%20and%20Means%20IRS%202022%20Filing%20Season_FINAL%20%201.pdf.

[11] For example, the current rates are 4.65%. *See* Utah Code § 59-7-102, -201 (corporate tax rate); Utah Code § 59-10-104 (individual tax rate).

What is charitable for the property tax exemption must be construed in the context of that unique, burden-shifting framework. The legislature's decision to adopt the federal definitions for Utah's income tax was a valid, and constitutionally authorized, policy decision. But that does not mean Utah's property tax framework also imports those broader standards. *See Tesla Motors UT, Inc. v. Tax Comm'n*, 2017 UT 18, ¶ 22-23, 398 P.3d 55 (finding a term had "two distinct" meanings in two different statutory schemes); *Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 25, 267 P.3d 863 (finding a phrase could be interpreted in several ways based on the context in which it was used). Considering that one taxpayer's exemption increases another's debt, those standards are a poor fit.

b. SMRTL's reliance on sales tax is misplaced.

SMRTL also argues it is exempt from property tax because federally recognized charities are exempt from Utah sales tax if the sales activities are substantially related to its charitable purpose. Pet. Br. at 26 (citing Utah Admin Code R865-19S-43). Again, the legislature's reliance on federal standards for sales tax is of limited use because the legislature has more authority to grant exemptions to sales tax. Utah Const. art. XIII, § 4(1). And it has exercised that authority liberally, allowing exemptions for 95 categories that reflect various legislative policy judgments. *See, e.g.,* Utah Code § 59-12-104(1) (granting exemption for sales of aviation fuel); 104(16)

(exemption for sales of newspapers or newspaper subscriptions); -104(19) (exemption for sales of hay); -104(38) (exemption for sales of certain equipment to a ski resort). Because the legislature can grant broad exemptions to sales taxes to further its policy choices, the legislature could also define charitable exemptions as broadly as it wanted.

But the legislature's use of the federal 501(c)(3) standard in the sales tax context does not mean that standard governs charitable in the property exemption context. Like the income tax, the sales tax operates differently from the property tax. Sales tax rates are set by statute for a fiscal year. Utah Code § 59-12-103(2). Exemptions do not shift the burden to other taxpayers by increasing their rate.

c. Definitions from other statutes are unhelpful.

SMRTL also cites other statutes that it says "link 'charitable' institutions to the I.R.C. § 501(c)(3) federal standard." Pet. Br. at 24. Those statutes address various topics, such as land conservation easements (Utah Code § 57-18-3); donations of agricultural products (Utah Code § 4-34-102) and prescription drugs (Utah Code § 58-17b-902); and management of various charitable accounts funded by private and public donations.[12] None of them

[12] *See, e.g.* Utah Code §§ 9-17-102 (Humanitarian Service and Educational and Cultural Exchange Restricted Account); 9-18-102 (Martin Luther King, Jr. Civil Rights Supported Restricted Account); 4-46-302 (LeRay McAllister

are rooted in the property tax exemption, so the legislature was free to define charitable broadly to accomplish its policy objectives. *See Feldman v. Salt Lake City Corp.*, 2021 UT 4, ¶ 48, 484 P.3d 1134 (noting legislature may use different definitions for different purposes).

The statutes where the legislature has adopted its own definition of charitable purpose suffer from the same infirmity. Here again, the cited provisions are from vastly different contexts, including charitable solicitations (Utah Code § 13-22-2(3)), trusts (Utah Code § 75-7-405), management of investment funds (Utah Code § 51-8-102), and the criminal code (Utah Code § 76-10-601). Pet. Br. at 25. And in those statutes, the legislature defined charitable as "any benevolent" objective or other purpose or achievement that is "beneficial for the community." Pet. Br. at 25 (citing Utah Code §§ 13-22-2(3); 75-7-405; 76-10-601). This Court has already rejected that standard for the property tax exemption. *See Intermountain*, 709 P.2d at 276 (holding exemption requires more than showing an entity benefits the community).

Working Farm and Ranch Fund); 26-54-102(1) *renumbered as* Utah Code 26B-1-319 (Spinal Court and Brain Injury Rehabilitation Fund).

2. SMRTL's commercial activities do not qualify as charitable under this Court's standards.

Rather than relying on the definitions of charitable that apply in other contexts, this Court should rely on the principles it has articulated in its own property tax cases. The Court reviews "each claim for [an] exemption . . . on its own facts." *Eyring*, 598 P.2d at 1351. The "test of charitable purpose is public benefit or contribution to the common good or the public welfare." *Yorgason*, 714 P.2d at 657. Along with that, however, "[i]t is also necessary that there be an element of gift to the community." *Id.* That is a higher standard than a mere community benefit. *Intermountain*, 709 P.2d at 276. The concept of a gift to the community includes whether there is "a substantial imbalance in the exchange between the charity and the recipient of its services" or whether the charity's operation lessens "a government burden." *See Intermountain*, 709 P.2d at 269.

Recognizing that charitable purposes is a fact-specific inquiry, this Court has attempted to articulate factors to guide that determination. *See Intermountain*, 709 P.2d at 269; *Eyring*, 598 P.2d at 1351. For example, *Intermountain* identified six guidelines to determine whether nonprofit hospitals are exempt:

> (1) whether the stated purpose of the entity is to provide a significant service to others without immediate expectation of material reward; (2) whether the entity is supported, and to what extent,

> by donations and gifts; (3) whether the recipients of the 'charity' are required to pay for the assistance received, in whole or in part; (4) whether the income received from all sources (gifts, donations, and payment from recipients) produces a "profit" to the entity in the sense that the income exceeds operating and long-term maintenance expenses; (5) whether the beneficiaries of the "charity" are restricted or unrestricted and, if restricted, whether the restriction bears a reasonable relationship to the entity's charitable objectives; and (6) whether dividends or some other form of financial benefit, or assets upon dissolution, are available to private interests, and whether the entity is organized and operated so that any commercial activities are subordinate or incidental to charitable ones.

Intermountain, 709 P.2d at 269.

The *Intermountain* factors attempted to "consolidate" the traditional factors discussed by this Court. *Yorgason*, 714 P.2d at 657; *see also Yorgason*, 714 P.2d at 661 (Zimmerman, J. concurring) ("[T]he considerations [the *Intermountain* factors] are designed to take into account do not appear to be substantially different than those this Court has traditionally canvassed in deciding whether" property is tax exempt.). For example, the third and fourth factors overlap with the substantial imbalance requirement because they indicate whether the entity is using the property for commercial gain instead of providing charity. *Intermountain*, 709 P.2d at 275-76. The fifth and sixth factors show that to be exempt, the owner cannot use the property for private

interests but must instead use it to contribute to the community's good. *Id.* at 276.

After the Court articulated those guidelines, Utah voters amended the property tax exemption to require nonprofit ownership of exempt property. Utah Const. art. XIII, § 3(1)(f). This Court has also recognized the *Intermountain* guidelines are difficult to apply across the board, *see Howell*, 881 P.2d at 883, 890 (upholding Tax Commission's different factors that applied to hospitals because they aligned with the principles announced in *Intermountain*); *see also Yorgason*, 714 P.2d at 661 (Zimmerman, J. concurring) (finding it more useful to consider the fact-specific analytical framework from *Friendship Manor*). The Court has thus not required rigid adherence to them where the analysis aligns with their underlying principles. *See Howell*, 881 P.2d at 890 (upholding Tax Commission's standards applicable to hospitals and nursing homes to ensure "guidelines" of *Intermountain* would be evenly applied). It has explained that the factors were only "useful guidelines" that may apply differently in each case. *Intermountain*, 709 P.2d at 270; *see also Yorgason*, 714 P.2d at 657 & n.16 (noting the *Intermountain* factors provide "useful guidelines" that should not "be read to be exclusive"); *Howell*, 881 P.2d at 883 (referring to the *Intermountain* factors as "general guidelines").

Put another way, the *Intermountain* guidelines articulate some useful considerations that may be relevant to whether the facts of certain cases show a property is used exclusively for charitable purposes.[13] But this Court should consider the underlying precedents they sought to consolidate. And those cases show SMRTL's property is not exempt because its focus on professional sports testing meant there was no substantial imbalance or lessening of a government burden. Cnty. Br. at 33-46. SMRTL's activities also fail the gift requirement because they largely reflect private interests, with only an incidental benefit to the community.[14] *Id.*

The County has covered why SMRTL doesn't satisfy any of those considerations. Cnty. Br. at 33-46. The Commission joins those arguments and does not repeat that analysis. It also adds that SMRTL's attempt to

[13] Utah Code § 59-2-1101(1)(a), (f) now provides a definition of charitable purposes, but that definition had not yet been adopted for the tax year at issue.

[14] The County asks this Court to clarify that the exemption requires that a property owner show (1) the lessening of a government burden (gift to the government); (2) a substantial imbalance (gift to the recipient), and (3) a direct public benefit as opposed to a private one (gift to the community). Cnty. Br. at 22-32 (Section II). The Commission does not join or take a position on the County's argument that all three of those conditions must be satisfied in every case. But in any event, SMRTL's heavy focus on professional sports means it does not satisfy any of them. Cnty. Br. at 33-45 (Section III). And the fact remains that SMRTL was not exclusively using its property for charitable activities. *See supra* at 19-24.

compare itself to Olympic entities and hospitals does not show that it satisfies any of the tests for the exemption.

a. SMRTL's Olympic plans did not relieve a government burden in 2020.

SMRTL argues that its tax exemption is justified because it lessens "government burdens associated with the Olympics." Pet. Br. at 28. Specifically, it argues it relieves the government's burden of building a lab before the Olympics return. But that theory lacks support and contradicts precedent.

On the facts, SMRTL has cited no evidence that its activities relieved a government burden in 2020—several years before the Olympics were even conditionally awarded to Salt Lake City. SMRTL cites information about what the State earmarked for the 2002 Olympics, Pet. Br. at 29. But it has cited no information about the future 2034 Olympics or how SMRTL was using its property to support those Olympics in 2020.

On the law, SMRTL's argument that the Court should find it was exempt in 2020 for burdens it might relieve in the future is like the owner in *Episcopal Church* asking for an exemption for land it intended to develop. 919 P.2d at 561. And if the Olympics never return to Salt Lake City, SMRTL would have been granted an exemption for relieving no Olympic burden at all. It should not be granted an indefinite exemption because it might one day

use its building for Olympic testing or spare the Olympics from constructing a lab.

SMRTL also asserts it is exempt because the Utah Athletic Foundation (UAF) is exempt. Pet. Br. at 29. SMRTL submits the statement from the Summit County Treasurer saying the property is exempt. Pet. Br. at 29, Add. 4. But there are no facts available about UAF's business and how it compares to SMRTL's. There are no signs that more than half of UAF's activities are devoted to professional sports, the extent of or profits from any commercial activities, or how UAF's use in 2020 compared to SMRTL's.

b. SMRTL cannot rely on hospitals to secure its exemption.

SMRTL asserts the Commission's decision was wrong because it must be exempt if hospitals are exempt. Pet. Br. at 43. That assertion falls short of SMRTL's duty to prove its exemption.

First, this Court has not determined that hospitals are always exempt. Indeed, *Intermountain* challenged the seemingly default assumption at that time that hospitals were exempt. 709 P.2d at 271 & n.10, 273 & n.11, 278. And not long after *Intermountain*, Utah voters rejected a proposed constitutional amendment that would have extended the exemption to property being used exclusively for hospital and nursing home purposes. *See*

Utah Voter Information Pamphlet, General Election Nov. 4, 1986, at 10;[15] Office of the Lieutenant Governor, State of Utah General Election 1986, at 20 (listing results for 1986 Proposition 1: Tax Exempt Hospitals and showing it did not receive a majority of votes).[16]

Second, SMRTL is not like a hospital. The entire community directly benefits from a hospital because each person is one medical emergency away from needing medical care. If such an emergency happens, federal law requires the hospital to provide emergency care, regardless of ability to pay. 42 U.S.C. § 1395dd. So the absence of a hospital harms the entire community because its members may be unable to receive care in an emergency, putting their lives at substantial risk. *See* Ostroff, C. and Frisbie, C., *Millions of Americans Live nowhere near a hospital, jeopardizing their lives* (Aug. 3, 2017).[17]

SMRTL has not shown most members of the public benefit directly from SMRTL's services in the same way. Consistent with its name, most of its testing is for sports. R. 501. And not just any sports—professional sports and elite athletics. *Id.* To be sure, SMRTL asserts it turns no one away who requests its services if its eligibility requirements are met. But there are only

[15] https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/1986-VIP.pdf
[16] https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/1986Gen.pdf
[17] https://www.cnn.com/2017/08/03/health/hospital-deserts/index.html

select entities that meet that selection criteria because SMRTL can only provide testing for entities that "have a published anti-doping protocol or policy." R. 318 Tr. 120:1-17).

Third, nothing in the record allows this Court to conclude that SMRTL qualifies for the same exemptions as hospitals. There is no evidence about what any exempt hospitals are charging their patients, what percentage of hospital services are free or discounted, how many patients the hospital sees that are covered by federal programs like Medicaid and Medicare, or how much a hospital is funded by revenue instead of donations. SMRTL can only speculate that the hospitals that have been declared exempt must operate similarly to it. Such speculation fails to satisfy SMRTL's burden.

II. SMRTL has not shown that this Court should overturn its caselaw to broaden the charitable exemption.

In one last attempt to avoid paying taxes, SMRTL argues that if it is going to lose, this Court should cast aside its precedent and reinterpret the constitutional property tax exemption. Pet Br. at 46-52.

This Court does "not overrule [its] precedents lightly." *Rutherford v. Talisker Canyons Fin., Co., 2019* UT 27, ¶ 27, 445 P.3d 474 (quoting *State v. Guard*, 2015 UT 96, ¶ 33, 371 P.3d 1). It does not, for instance, overturn its precedent because it "would decide a case differently now" or even because it got something wrong. *Id.* (quoting *Kimble v. Marvel Ent., LLC*, 576 U.S. 446,

455 (2015)). This Court can also clarify its rulings without overturning them. *See Rutherford*, 2019 UT 27, ¶ 78.

Those asking the Court to overturn prior decisions bear a heavy burden to show that the cases are unworthy of stare decisis respect. *Randolph v. State*, 2022 UT 34, ¶ 66, 515 P.3d 444. The party requesting the overrule must show that "none of the factors that give stare decisis special weight are present." *Id.* (quoting *Eldridge v. Johndrow*, 2015 UT 21, ¶ 23, 345 P.3d 553). Those factors require the Court to analyze "(1) the persuasiveness of the authority and reasoning on which the precedent was originally based, and (2) how firmly the precedent has become established in the law since it was handed down." *Eldridge*, 2015 UT 21, ¶ 22. The Court does not overrule its prior cases unless it is "clearly convinced th[e] prior caselaw was originally erroneous or is no longer sound." *Bank of America v. Adamson*, 2017 UT 2, ¶ 9, 391 P.3d 196 (quoting *Scott v. Universal Sales, Inc.*, 2015 UT 64, ¶ 23, 356 P.3d 1172) (internal quotation marks omitted).

SMRTL has not done a stare decisis analysis that warrants overturning this Court's body of law on the property tax exemption. Nor has it shown that the current law offends the Utah Constitution.

A. SMRTL admits it has not met its burden.

SMRTL concedes it has not met its burden to show that this Court should overturn its prior cases or that those cases conflict with Utah's

Constitution. Its footnote states that it was "not possible to provide a full stare decisis analysis and complete discussion of the original public meaning of the charitable use exemption" within the brief's page limits. Pet. Br. at 53 n.10. It asks this Court to give it another chance to do so through supplemental briefing if the Court is inclined to rule against SMRTL. *Id.*

SMRTL's request essentially asks this Court to give it another try. But a party asking the Court to overrule its precedent bears a heavy burden to show error. To meet its burden of persuasion, it must raise and adequately brief that issue in its principal brief. Utah R. App. P. 24(a)(8); *Howick v. Salt Lake City Corp.*, 2018 UT 20, ¶ 14, 424 P.3d 841; *Adamson*, 2017 UT 2, ¶ 11. If the page limits did not permit that, SMRTL could have requested permission to file an overlength brief, Utah R. App. P. 24(h), or it could have prioritized that argument.

Yet SMRTL made a litigation decision to prioritize its other arguments. It should not get a chance to brief a different theory if it does not like the results of that choice. Nor should SMRTL be able to use that choice to pass the burden of conducting a comprehensive original public meaning analysis onto the Commission and the County in their response briefs.

B. SMRTL's stare decisis analysis does not show the cases should be reversed.

SMRTL argues the Court's cases should be overruled because they have not resulted in a firmly established body of law and are therefore entitled to little weight. Pet. Br. at 47-51.

SMRTL asserts *Loyal Order of Moose* shows this Court's precedent has been inconsistent. Pet. Br. at 47-48. To be sure, *Loyal Order of Moose* acknowledged that the Court had, for a time, strayed from its original interpretation of the exemption and applied it incorrectly. *See supra* at 15-22. But *Loyal Order of Moose* corrected that mistaken interpretation, returning to its original exclusive use requirement announced in *Parker*, a case decided in 1901—five years after the charitable exemption was ratified in Utah's original Constitution. *Loyal Order of Moose*, 657 P.2d at 263-64; *Parker*, 64 P. at 962-63. And since *Loyal Order of Moose* returned to that construction in 1982, the exclusive use requirement has remained and been reiterated by this Court. *See Corporation of Episcopal Church*, 919 P.2d at 560.

SMRTL's arguments about the development and application of the *Intermountain* factors likewise do not support overruling this Court's precedent. Those factors remain "useful guidelines" that encompass the standards this Court has long relied on to determine whether an entity qualifies for a charitable exemption. *See Yorgason*, 714 P.2d at 657. While

those guidelines could be clarified, they do not suggest that this Court's entire body of case law since *Loyal Order of Moose* is flawed.

Beyond that, SMRTL has not shown that courts have struggled to apply this Court's precedent during that time. As SMRTL acknowledges, this Court's body of law has remained largely the same since the 90s and that exemptions have been routinely granted to hospitals and Olympic entities. Pet. Br. at 48. SMRTL cites little evidence of that, but in any event, its argument suggests the courts, the Commission, and the County can apply the precedent.

The different results in *Intermountain* and *Howell* for nonprofit hospitals do not suggest there is no workable test. Pet. Br. at 50. In *Intermountain*, the Court declared that "minimal efforts" to show charity would no longer suffice and that the hospitals had failed to build a record to show they were entitled to an exemption. 709 P.2d at 278-79. In *Howell*, the Court held the Commission's standards adopted after *Intermountain* were constitutional. 881 P.2d at 884, 890. That was the only challenge before the Court, so it affirmed the Commission's decision that the hospitals had satisfied those standards. *Id.* That is not an inconsistent result. In any event, neither *Howell* nor *Intermountain* hold that all nonprofit hospitals are exempt. Hospitals are exempt only if they satisfy their burden to show they are entitled to the exemption.

SMRTL also points to the legislature's amendment of the property tax exemption statute as evidence that the Court's body of law is "uncertain" and should be overruled. Pet. Br. at 49, 51. Those standards were not yet in effect for 2020, and they are not at issue here. Yet SMRTL suggests they are unconstitutional. This Court should not allow such a preemptive challenge. If the legislature's recently codified definition is grounds to overrule this Court's precedent, this Court should wait for a case when those specific statutes have been applied and challenged.

C. SMRTL has not shown this Court's decisions contradict the exemption's original public meaning.

SMRTL argues this Court's precedent is not firmly established because it is not rooted in an original public meaning analysis of the exemption. SMRTL also fails to conduct that analysis, so it cannot show the Court's earlier decisions were wrong.

When this Court interprets the Constitution, the Court starts "with the meaning of the text as understood when it was adopted." *S. Salt Lake City v. Maese*, 2019 UT 58, ¶ 18, 450 P.3d 1092. But the text may not always "end the debate over a provision's meaning" to those who put the language in the Constitution. *State v. Barnett*, 2023 UT 20, ¶ 32, 537 P.3d 212. So an original public meaning analysis may include historical evidence of the "state of the law when it was drafted, and Utah's particular traditions at the time of

drafting." *Maese*, 2019 UT 58, ¶ 18 (quoting *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 12, 140 P.3d 1235). There is no "magical formula" for this analysis, but courts have considered the voter information pamphlet, published materials from the relevant time, legislative materials, and whether there was guidance from contemporaneous court cases. *Barnett*, 2023 UT 20, ¶¶ 59-80 (considering voter information materials, newspapers, legislative history, and lack of guidance from court cases); *Maese*, 2019 UT 58, ¶ 45-53 (looking to statutes and newspapers from the year of drafting).

SMRTL's brief fails to engage in that analysis. To begin with, SMRTL does not present a reasoned examination of what version of the exemption the Court should consider in an original public meaning analysis. SMRTL correctly notes that the original Constitution contained similar language, Pet. Br. at 52, and that the 1982 amendment added the nonprofit requirement. *Id.* But SMRTL then declares "this provision was again repeatedly amended and restated in 1986, 1996, 2002, 2010, 2012, and 2017, and voters in 2017 "would have thought the charitable use exemption" would have exempted the way SMRTL uses its property. *Id.* at 53.

That conclusion glosses over the exemption's history and oversimplifies what this Court has said about what year matters. While article XIII, section 3 was amended in the listed years, those amendments had nothing to do with the charitable use exemption. The cited amendments made changes to

exemptions related to farm equipment (1986),[18] property owned by disabled veterans and their surviving spouses (1996),[19] personal property of inconsequential value (2006), [20] water rights and adjacent land owned by nonprofits (2010),[21] and property owned by members on active duty in the military (2012 & 2017).[22] The amendment in 2002 modernized the makeup of County Boards of Equalization and reorganized the sections in the article and made technical changes.[23] Even then, it left the actual language for the charitable use exemption unchanged from 1982.

Yet SMRTL concludes that this Court's precedent means the 2017 amendment is the one that matters because the Court does not look back to voters' understanding at the time of earlier enactments. Pet. Br. at 53. That

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[18] 1986 Laws of Utah 780, H.J.R. No. 18, *Property Tax-Farm Exemption Amendment*, 46th Leg. Gen. Sess., adopted at election Nov. 4, 1986
[19] 1996 Laws of Utah 1763, S.J.R. 1, *Resolution Amending Veterans Property Tax Exemption*, 51st Leg., Gen. Sess., adopted at election Nov. 5, 1996
[20] 2006 Utah Laws H.J. R. 1 (West's 390), *Resolution Regarding Property Tax on Personal Property*, 56th Leg. Gen., Sess., adopted at election Nov. 7, 2006.
[21] 2010 Utah Laws H.J. R. 2 (West's 416), *Joint Resolution on Property Tax Exemption for Water Facilities*, 58th Leg., Gen. Sess., adopted at election Nov. 2, 2010.
[22] 2017 Utah Laws H.J.R. 7 (West No. 481), *Proposal to Amend Utah Constitution—Active Military Property Tax Exemption*, 62nd Leg, 2017 Gen. Sess., adopted at election Nov. 6, 2018; 2012 Utah Laws S.J. R. 8 (West No. 84), *Joint Resolution on Property Tax Exemption for Military Personnel*, 59th Leg., Gen. Sess., adopted at election Nov. 6, 2012 general election.
[23] 2002 Utah Laws S.J. R. 10 (West's No. 662), *Resolution Amending Revenue and Taxation Provisions of Utah Constitution*, 54th Leg., Gen. Sess., adopted at election Nov. 5, 2002.

is not exactly true. The Court looks at the meaning "the public would have ascribed to the amended language when it entered the constitution." *Barnett*, 2023 UT 20, ¶ 41, 537 P.3d 212 (quoting *Randolph v. State*, 2022 UT 34, ¶ 68, 537 P.3d 444. That does not mean every amendment affects a substantive change to the operative text. There are times voters amend a provision but intend "no substantive change." *Id.* ¶ 50 (quoting *State v. Kastanis*, 848 P.2d 673, 675 (Utah 1993) (per curiam)).

SMRTL has engaged in no analysis from when the charitable exemption language entered the Constitution. SMRTL also offers no analysis of why it believes 2017 is the determinative version or whether the voters intended the change in that year—or in any year—to be substantive. It merely concludes that the voters in 2017 would have considered SMRTL's property to be exempt, even though that amendment did not change the charitable use exemption at all.

SMRTL's remaining analysis is similarly flawed. It argues that Utah voters would have understood it is tax exempt because "the concept of exclusive charitable use constitutes a legal term of art" that evolves and reflects federal tax law. Pet Br. at 53. SMRTL's argument asks this Court to assume that the voters would have understood the exemption to align with federal meanings rather than this Court's cases interpreting the exemption. Similarly problematic, SMRTL doesn't identify what specific language is a

"term of art." It instead combines charitable purposes and exclusive use into a single "concept," effectively reading "used exclusively" out of the exemption by allowing any 501(c)(3) to claim the exemption.

Finally, SMRTL argues that the 2017 amendment must mean it is exempt because voters would have also understood that Olympic-affiliated nonprofit entities are also tax exempt. Pet. Br. at 53. There is no evidence that all Olympic-affiliated nonprofit entities are tax exempt. There is also no record to compare what those entities do to qualify for an exemption to SMRTL's claim for an exemption.

SMRTL has not met its burden to show that this Court should overrule its caselaw and reinterpret the exemption in SMRTL's favor. There is nothing to suggest that Utah voters intended to increase their own property taxes so that an entity who mostly works for professional sports at market rates doesn't have to pay them.

Conclusion

For the reasons discussed above, this Court should affirm the Commission's decision.

Respectfully submitted,

/s/ Erin T. Middleton
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Certificate of Compliance

1. This brief complies with the total type-volume limitations of Utah Rule of Appellate Procedure 24(g)(1) because this brief contains 12,745 words, excluding the parts of the brief exempted by Rule 24(g)(2).

2. This brief complies with the typeface requirements of Utah Rule of Appellate Procedure 27(a) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Century Schoolbook font.

3. This brief complies with the non-public information requirements of Utah Rule of Appellate Procedure 21(h) because this brief contains no non-public information.

/s/ Erin T. Middleton
Assistant Solicitor General
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Certificate of Service

I certify that on December 18, 2023, I served a true and correct copy of the above Brief of Utah State Tax Commission by electronic mail to the following:

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/s/ Erin T. Middleton

Addenda

1. Amended Findings of Fact, Conclusions of Law and Final Decision of the Tax Commission (Aug. 30, 2022)
2. Utah Const. art. XIII, § 2
3. Utah Const. art. XIII, § 3

Addendum 1

Amended Findings of Fact, Conclusions of Law and Final Decision of the Tax Commission (Aug. 30, 2022)

BEFORE THE UTAH STATE TAX COMMISSION

SPORTS MEDICINE RESEARCH AND TESTING LABORATORY, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	**AMENDED[1] FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 20-1618 Parcel No.: 27-**13**-328-001-0000 Tax Type: Property Tax/Exemption Tax Year: 2020 Judge: Phan

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Jennifer N. Fresques, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner:	Samuel Lambert, Attorney at Law
	Bruce Olson, Attorney at Law
For Respondent:	Bradley Johnson, Deputy District Attorney for Salt Lake County
	Tim Bodily, Deputy District Attorney for Salt Lake County

[1] The Findings of Fact, Conclusions of Law, and Final Decision previously issued on August 2, 2022 incorrectly listed the parcel number as 27-12-328-001-0000, which should be 27-13-328-001-0000. This Decision is being amended to correct that error.

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 4, 2022, in accordance with Utah Code Ann. §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing and the legal arguments submitted by the parties in posthearing briefing,[2] the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner Sports Medicine Testing and Research Laboratory ("SMRTL") is appealing Respondent's ("County's") denial of an exclusive use property tax exemption for property owned by SMRTL for tax year 2020. SMRTL had filed an Application for Exemption with the County dated February 27, 2020.[3] The County had notified SMRTL of the denial by letter dated May 21, 2020.

2. SMRTL timely appealed the County's decision to the Utah State Tax Commission and the matter proceeded to this Formal Hearing.

3. The parties were not in dispute that SMRTL owned the property subject to this appeal.

4. The parties were not in dispute that SMRTL was a nonprofit entity. The parties had submitted Stipulated Exhibit 1 which contained a letter from the Internal Revenue Service dated June 8, 2013. The letter stated that SMRTL was classified as an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The letter also stated, "Based on the information you provided, we determined you meet the requirements for classification as a public charity described in section 509(a)(4) of the Code."[4] SMRTL was incorporated under the Utah Revised Nonprofit Corporation Act on December 1, 2003.[5] As noted in its Articles of Incorporation, "No part of the net earnings of the corporation shall inure to the benefit of or be distributable to any member of the corporation which is not then an exempt organization described in section (501)(c)(3) of the Internal Revenue Code . . ."[6]

5. The parties stipulated to the admissibility of the exhibits offered at the Formal Hearing and Stipulated Exhibits 1-15 were received into the hearing record. SMRTL offered as fact witnesses Dr. Daniel Eichner, CEO of SMRTL, and Christopher West, Head of Finance for SMRTL. The County did not offer any other fact witnesses at the Formal Hearing, but did examine the SMRTL witnesses.

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[2] Both Petitioner and Respondent submitted simultaneous Posthearing Briefs on May 16, 2022, and both submitted Reply Briefs dated May 26, 2022.
[3] Stipulated Exhibit 1.
[4] Stipulated Exhibit 1, p. 0078.
[5] Stipulated Exhibit 1, p. 0011.
[6] Stipulated Exhibit 1, p. 0013.

6. The property subject to this appeal is parcel no. 27-13-328-001, located at 10644 South Jordan Gateway in South Jordan, Utah. SMRTL had acquired the land in March of 2019 and had commenced construction of the building to serve as its administrative offices and laboratory in June 2019. Construction was not complete as of the January 1, 2020 lien date.[7] Dr. Daniel Eichner, CEO of SMRTL, testified that the property is 2 acres of land, and has a multi-storied parking structure and a building that has "about 80,000 square feet of lab space." Dr. Eichner acknowledged, "we do not utilize the whole building right now." He explained the plan was that "if the Olympics comes back here, that we wouldn't need a new facility, and that would greatly enhance the organizing committee's bid for saving money and so forth."[8]

7. SMRTL had been operating its laboratory facility for a number of years at a location in Research Park at the University of Utah, prior to the purchase of the subject property. Dr. Eichner testified that they had wanted SMRTL to stay in Research Park, but were not able to get that worked out with the University of Utah. With their lease running out on their Research Park location, SMRTL had purchased the subject property land and commenced construction of the new laboratory space.[9]

8. Dr. Eichner testified that SMRTL was created as a joint effort among the University of Utah, the United States Anti-Doping Agency ("USADA"), the NFL Foundation for Health Research ("NFLFHR")[10] and the NCAA. He explained that SMRTL was created at the time when one of the two permanent World Anti-Doping Agency ("WADA") accredited labs in the United States had shut down and as all Olympic, Paralympic and Pan American games athletes needed access to WADA-accredited testing in order to compete, there was concern in the United States about having to rely on a single accredited laboratory.[11]

9. In 2006 SMRTL received accreditation from WADA and since then it has been one of only two laboratories in the United States qualified to test Olympic, Paralympic and Pan American games athletes for performance-enhancing and other prohibited drugs.[12] WADA requires that SMRTL maintain both a testing and a research program. SMRTL represented that it must devote at least 7% of its budget to scientific research related to performance enhancing drugs and publish its research in peer-reviewed literature.[13] There are 32 WADA accredited labs

[7] Stipulated Exhibit 1, p. 0004.
[8] Transcript pp. 122-124.
[9] Transcript, p. 35.
[10] Stipulated Exhibit 1, p. 0004.
[11] Transcript, p. 30.
[12] Testimony of Mr. Eichner, Transcript pp. 31-32.
[13] Stipulated Exhibit 1, p. 0004.

in the world. SMRTL's representative testified that SMRTL is the only WADA accredited lab that is non-government funded.[14]

10. As set out in its Articles of Incorporation, SMRTL's mission and purposes were stated as the following:[15]

> Section 3.1 Purposes. The corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes, and to foster national and international amateur sports competition, within the meaning of sections 501(c)(3) of the Internal Revenue Code of 1986, as amended, and to the corresponding provisions of any subsequent federal tax law (the "Internal Revenue Code"). Subject to the foregoing, the specific purposes and objectives of the corporation shall include, but not be limited to the following:
> (a)to promote the health of the general public by promoting the use of effective drug testing as a deterrent to discourage athletes from using performance enhancing and other prohibited substances which endanger health and/or enhance athletic performance;
> (b) to foster fair and safe national and international amateur sports competition by promoting drug-free sports competition at all amateur and professional levels, which shall be accomplished through: (i) the detection of previously unknown performance enhancing substances, and (ii) the ongoing development and refinement of techniques for identifying and testing for the prohibited use of performance enhancing or other prohibited substances and doping methods;
> (c) to promote, conduct and enhance scientific research relating to the identification and development of effective testing procedures for performance enhancing substances;
> (d) to assure the availability of, and to conduct, high quality testing necessary to the enforcement by applicable enforcement bodies of prohibitions on the use of performance enhancing and other prohibited substances and doping methods;
> (e) to promote educational opportunities relating to anti-doping research;
> (f) to develop ethical principles relating to testing procedures for use of performance enhancing and other prohibited substances;
> (g) to maintain and distribute information on prohibited substances, prohibited doping methods, and methods of detecting prohibited substance use;
> (h) to enter into collaborative agreements with other anti-doping laboratory organizations for the purpose of detecting and prohibiting the use of performance enhancing and other prohibited substances;
> (i) to make distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code; and
> (j) to undertake such other lawful activities which may be consistent with these purposes, or for which a nonprofit corporation may be organized under Chapter 6, Title 16, Utah Code Annotated.

11. Dr. Eichner testified that the summary provided in the Articles of Incorporation was an accurate summary of SMRTL's purposes.[16] He testified that SMRTL was "a sports medicine research and testing laboratory." He explained "we do

[14] Testimony of Mr. Eichner, Transcript pp. 41-42.
[15] Stipulated Exhibit 1, pp. 0011-0013.
[16] Transcript, p. 37.

research and we do testing, and we specifically specialize in performance-enhancing substances."[17]

12. SMRTL filed federal Forms 990 Return of Organization Exempt from Income Tax. For Tax Year 2018, Form 990, Line 8 indicated that SMRTL had received $397,134 in contributions and grants and $10,967,994 in Line 9 program service revenue, which Part VIII of the form indicated came from testing fees. The contribution and grants were reported to all be from one source, Partnership for Clean Competition. SMRTL had reported $11,716,266 in total revenue on Line 12.[18] For tax year 2019 SMRTL had reported on Line 8, $627,878 in contributions and grants, $9,051,886 in program revenue and $9,813,945 in total revenue.[19] Schedule B of that form listed that the contributions and grants had come from three different organizations: the Partnership for Clean Competition; the World Anti Doping Agency; and Major League Baseball.[20] Schedule O of both the 2018 and the 2019 returns indicated that SMRTL had only one member or stockholder and that its sole member was the NFL Foundation for Health Research, which it listed as a 501(c)(3) organization.[21]

13. Dr. Eichner discussed that he felt SMRTL was performing a function related to public safety. He explained that by testing professional and amateur athletes, SMRTL learns "what may be getting used, because it's a snapshot that the government will never see because there's no routine testing in the community . . . to see whether people are potentially consuming or administering dangerous substances knowingly or unknowingly." He explained that from "the testing that we do in the regular amateur athletics or in the professional leagues, we get a snapshot of what could be used in the community, and then we can focus in on those products, we could purchase and acquire the different products that may be getting used, abused, knowingly or unknowingly, and then make . . . important recommendations to the . . . enforcement agencies, in some instances, or just the greater general public as far as these things are dangerous for these reasons."[22] Dr. Eichner testfied, "we've worked directly with the federal government in certain instances, with state governments, with a lot of medical institutes to help . . .educate these people" on "the different problems or dangers that could be associated with

[17] Transcript, pp 28-29.
[18] Stipulated Exhibit 3.
[19] Stipulated Exhibit 4.
[20] Stipulated Exhibit 4, p. 0244.
[21] Stipulated Exhibit 4, p. 0252.
[22] Transcript, pp. 37-38.

some of these products."'[23] He provided the example of data they initially discovered while testing professional athletes that led to SMRTL performing a nationwide study and publishing 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 called selective androgen receptor modulators. [24]

14. However, there was not specific data presented on how many times SMRTL had discovered dangerous products, how many times SMRTL had notified the public about dangerous products or how many times SMRTL had reported dangerous products to government agencies.

15. Dr. Eichner also testified that SMRTL performed work for various federal government agencies. He testified SMRTL performed testing for the Department of Defense's steroid testing program. He testified that "we do work for the DEA, the FBI. So various law enforcement agencies as well."[25] Dr. Eichner explained that although the Department of Defense and the DEA had their own labs, they still used the SMRTL lab, "because we're such a speciality lab in what we do."[26] He also asserted in his testimony that SMRTL performs work for the DEA for free and did "a lot of pro bono work for" the Department of Defense.[27] However, SMRTL did not provide a list of all of the work provided or the value of the work donated to the government agencies.

16. When asked what SMRTL charged for the testing he testified that "a lot of the stuff, we don't charge. And so, you know, the DEA work, we don't charge." He also testified about some testing done for specific medical patients and SMRTL did not charge for those tests. He also testified that SMRTL did testing for the University of Utah, and "we lose money on that one."[28] Dr. Eichner testified that "the professional leagues will pay what they should pay, and then everything else is, if you will, subsidized from those programs." Regarding how pricing was set for the discounted testing, Dr. Eichner testified that "traditionally what we try to do is we try to recoup our testing costs. So the reagents, you know, to run the analysis, we try to make sure we cover those ones there. Sometimes, you know, we get it fine, sometimes we don't and we lose money, and sometimes we might make, you know, a few dollars as well. But traditionally speaking,

[23] Transcript, p. 39.
[24] Transcript, pp. 39; 47.
[25] Transcript, p. 42.
[26] Transcript, p. 43.
[27] Transcript, p. 51.
[28] Transcript, p. 49.

we're not setting those programs to make money."[29] Dr. Eichner gave the example that they would charge $250 for a test to the professional league and for that test on average do three different screens, but for "our subsidized programs, we might do five or six different screens and we might only charge them $140."[30] He testified regarding SMRTL's charges to the Department of Defense, "I think they get a hundred dollar testing program that we would charge the professional leagues $250 for, and then they get a lot of their consultation for free."[31] However, Dr. Eichner testified that SMRTL did not calculate exactly how much of a subsidy it was providing to any of the organizations.[32] Dr. Eichner acknowledged that they charged the market rate for testing professional athletes but explained that this was needed in order for SMRTL to perform its research and also allowed SMRTL to remain in business.[33]

17. Dr. Eichner testified that SMRTL had worked directly with the federal government to get the Designer Steroid Substance Control Act passed. He explained that when DSSCA passed,[34] "it shut down most of the rogue chemists that were selling steroids trying to masquerade them as supplements . . there was a lot of people that were saved from bad liver damage."[35]

18. Dr. Eichner also testified SMRTL occasionally performed testing for research institutions.[36] SMRTL did provide some press releases or otherwise published information about some of SMRTL's activities. There was a press release dated April 8, 2021 from the United States Attorney's Office of the Eastern District of Lousianna regarding a conviction and sentencing for distribution of prescription medications, in which they gave SMRTL credit for assisting. There was an article dated October 2019 about the UFC anti-doping policy which mentioned that SMRTL had done testing and provided information. There was a blog post dated June 3, 2016 that discussed a seminar at the University of Utah involving Dr. Eichner. There was also a press release dated May 13, 2020, which discussed SMRTLs involvement in the first nationwide study for COVID-19 antibodies. [37]

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[29] Transcript, pp. 49-50.
[30] Transcript, p. 54.
[31] Transcript, p. 62.
[32] Transcript, p. 55.
[33] Transcript, p. 48.
[34] This act was passed in 2014. *See* https://www.congress.gov/bill/113th-congress/house-bill/4771.
[35] Transcript, p. 57.
[36] Transcript, p. 48.
[37] All press releases are in Stipulated Exhibit 13.

19. Dr. Eichner testified that SMRTL performed a significant amount of research and shared its findings in medical and science publications. He noted that SMRTL had published a research paper on a dangerous and unapproved class of drugs being sold as supplements.[38] SMRTL provided evidence that SMRTL or Dr. Eichner had been involved in the publication of numerous scientific or medical papers. SMRTL submitted a list of the publications that had occurred in the 2020-2022 time period. There were 17 publications on this list.[39] In addition, SMRTL provided copies of numerous medical or scientific articles that had been published in 2018 and 2019, for which SMRTL or its employees were involved. There was an article published in Haematologica in 2018 titled *Evaluation of Serum Markers for Improved Detection of Autologous Blood Transfusions.* There was a clinical research article published October 5, 2018, titled *Effects and Urinary Detection of Clomiphene in Men*. There was a research article published in eLifesciences.org, dated December 17, 2019, titled *Single-cell Modeling of Routine Clinical Blood Tests Reveals Transient Dynamics of Human Response to Blood Loss* and an editorial published in Clinical Chemistry September 30, 2019, titled *Dried Blood Spots May Improve Detection of Blood Doping*. A research article was published in Wiley on March 17, 2019, titled *Anti-Doping Analytes in Serum*. Another research article was published in Wiley on January 21, 2019, titled *Assessing Serum Albumin Concentration Following Exercise-Induced Fluid Shifts in the Context of the Athlete Biological Passport*, and another article was published on October 23, 2019 titled *Hematological Changes Following an Ironman Triathlon: An Antidoping Perspective*. There was an article published in the Journal of Pharmaceutical and Biomedical Analysis on August 10, 2019, titled *Investigating Oral Fluid and Exhaled Breath as Alternative Matrices for Anti-doping Testing* and an article was published in ScienceDirect on June 8, 2019, titled *Growth Hormone, Growth Hormone Secretagogues, and Insulin-like Growth Factor-1 in Sports: Prohibited Status, Therapeutic Use Exemptions and Analytical Detectability.*[40]

20. Although testimony was presented regarding free and discounted testing provided to government and other organizations or individuals, there was a lack of quantifiable data on the actual amount of the gift provided by SMRTL to any given agency, individual or organization. The most specific information provided was in SMRTL's Financial Statements. For the fiscal year ending June 30, 2020, the financial

[38] Transcript, pp. 39-40.
[39] Stipulated Exhibit 14.
[40] Copies of all publications are included in Stipulated Exhibit 10.

statements indicated that during that fiscal year, the National Football League accounted for 29.3% of the total testing fees, Major League Baseball accounted for 38.7% of the total testing fees and the United States Anti-Doping Agency accounted for 17.6% of the total testing fees.[41] Therefore, during that fiscal year, 85.60% of SMRTL's testing fees came from those three agencies and 68% came from just Major League Baseball and the National Football League. This did not purport to be a list of all agencies for which SMRTL was performing these tests; it was just the three agencies with the largest percentage of fees. For the fiscal year ending June 30, 2019, the National Football League accounted for 28.7% of total testing fees, Major League Baseball accounted for 26.1% of total testing fees and the United States Anti-Doping Agency accounted for 20.1% of total testing fees.

21. Christopher West, Head of Finance for SMRTL, testified that he was able to produce from SMRTL's accounting records Stipulated Exhibit 12, which listed the total billable tests for each of the years 2017 through 2020 and how many of those tests were billed at market rates and how many at a discount.[42] Mr. West, however, explained that SMRTL did not keep track of tests that had been nonbilled, which would be the ones that SMRTL had performed for free.[43] Mr. West's exhibit showed the following:

	Billable Tests		
	Market	Discount	Total
2017	40,683	42,359	83,042
2018	52,656	44,092	96,748
2019	53,112	45,971	99,083
2020	38,848	36,863	75,711

22. SMRTL also produced with the same exhibit a list of the entities to which SMRTL had given discounts. On the list were four Utah universities, a number of universities located in other states, and many other organizations, including military and other U.S. government organizations, law enforcement organizations and anti-doping organizations around the world.[44] Regarding the nongovernmental entities, the list did not indicate if each individual entity was a nonprofit entity. Additionally, there was no listing of the number of discounted tests provided to any of the agencies or the value of the discounting provided to any of the agencies.

[41] Stipulated Exhibit 7, p. 0216.
[42] Transcript, p 126.
[43] Transcript, p. 131.
[44] Stipulated Exhibit 12.

23. The evidence submitted at the hearing shows that although SMRTL does provide discounted testing and even some free testing for performance enhancing and other prohibited substances, more than half of the testing was performed for professional sports organizations to which SMRTL had charged market rates. Additionally, significantly more than half of SMRTL's testing revenue for the fiscal year ending June 30, 2020 came from SMRTL charging full price for the tests it provided to professional sports leagues.

24. Dr. Eichner testified that although SMRTL lost money in the beginning, the revenue has exceeded expenses every year since 2012.[45] SMRTL's financial statements showed the following total revenue and gains, total expenses and total increase in assets for each fiscal year from 2017 to 2020:[46]

	2017	2018[47]	2019	2020
Total Revenue and Gains	$9,612,660	$11,042,488	$11,611,441	$9,722,313
Total Expenses	$6,537,546	$7,400,476	$7,953,524	$9,342,400
Increase in Net Assets	$3,075,114	$3,642,012	$3,657,917	$379,913

25. There was no evidence submitted by SMRTL that any discreet portion of the subject property was used only for the free or subsidized testing for performance enhancing or banned substances or for the research SMRTL published, separate from where SMRTL conducted its testing for the professional sports organizations at market prices.

26. The County did not offer additional fact witnesses or additional evidence independent from the SMRTL witnesses or the stipulated exhibits.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides for the assessment of property, as follows:

> All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

Article XIII, Section 3 of the Utah Constitution exempts certain property from tax, as provided below in relevant part:

[45] Transcript, p 34.
[46] Stipulated Exhibits 5, 6 & 7.
[47] This was the Revenue and Gain, Total Expenses and Increase in Net Assets, reported for 2018 in Exhibit 5, SMRTL's 2017-2018 Financial Statements. Exhibit 6, SMRTL's 2018-2019 Financial Statements, contained somewhat different amounts for tax year 2018. Exhibit 6 Indicated $11,030,095 in Total Revenue and Gains, $7,388,083 in Total Expenses and still indicated $3,642,012 in Increased Net Assets.

(1) The following are exempt from property tax...
(f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes...

Utah Code §59-2-1101(1)(b) provides:

"Exclusive use exemption" means a property tax exemption under Subsection 3(a)(iv), for property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes.

Utah Code §59-2-1101(3)(a)[48] provides that certain properties are exempt from property tax as follows, in pertinent part:

The following property is exempt from taxation...

(iv) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes...

Guidance on what constitutes a "nonprofit entity" is provided in Utah Code Ann. §59-2-1101(1)(d):

"Nonprofit entity" includes an entity if the:
(i) entity is treated as a disregarded entity for federal income tax purposes;
(ii) entity is wholly owned by, and controlled under the direction of, a nonprofit entity; and
(iii) net earnings and profits of the entity irrevocably inure to the benefit of a nonprofit entity.

A property owner may appeal the decision of the County Board of Equalization pursuant to Utah Code §59-2-1102(7) as follows:

Any property owner dissatisfied with the decision of the county board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006(1), below:

Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, or a tax relief decision made under designated decision-making authority as described in Section 59-2-1101, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor

[48] This was the law in effect for tax year 2020, which is the law applicable in this appeal. Effective for tax year 2021, the Utah Legislature amended Utah Code Sec. 59-2-1101 in House Bill 47, 2020 General Session. These changes were substantial and statutorily defined or redefined "charitable purposes" "gift to the community" "educational purposes" and "nonprofit entity." Because these changes were so significant, this decision should not be considered precedent for subsequent tax years beginning with tax year 2021.

> within 30 days after the final action of the county board or entity with designated decision-making authority described in Section 59-2-1101.

A party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption. *See Butler v. State Tax Comm'n, 3*67 P.2d 852, 854 (Utah 1962). Further, in *Corporation of the Episcopal Church in Utah v. Utah State Tax Comm'n,* 919 P.2d 556 (Utah 1996), the Court wrote, "[t]he burden of establishing the exemption lies with the entity claiming it, although that burden must not be permitted to frustrate the exemption's objectives." In addition, the Court noted, "[e]xemptions are strictly construed[,]" but noted that the strict construction "should not be so narrowly applied, however, that it defeats the purpose of the exemptions."

CONCLUSIONS OF LAW

1. Utah Code §59-2-103 provides that all tangible property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, unless otherwise provided by law.

2. Utah law does provide several exemptions from property tax including the exclusive use exemption at issue in this appeal. A property may qualify for the exemption at issue in this appeal if the property is owned by a nonprofit entity and used exclusively for religious, charitable or educational purposes. See Utah Constitution, Art. XIII, Sec. 3 and Utah Code §59-2-1101(3).

3. In this appeal, it is undisputed that SMRTL qualified as a nonprofit entity for purposes of the exemption. It was also undisputed that SMRTL owned the property subject to this appeal.

4. This matter does not present questions of disputed facts as the Findings of Fact as stated above were largely uncontested between the parties. Instead this appeal presents questions of law to the Tax Commission. The issues in this appeal are whether the property met the "used exclusively" and "charitable purposes" requirements for the exclusive use exemption provided at Utah Code §59-2-1101(3)(a)(iv). SMRTL argued that the property qualifies for the exemption because it is "used exclusively" for "charitable purposes" based on a broad interpretation of Utah Code §59-2-1101(3)(a)(iv), while the County argued that the property failed to meet both the "used exclusively"and "charitable purposes" requirements for this exemption based on the more narrow interpretation applied in the Utah case law.

5. During tax year 2020, there was no statutory definition of "used exclusively" or "charitable purposes" for purposes of Utah Code §59-2-1101(3)(a)(iv).[49] However, the Utah courts have provided guidance on how these terms are to be interpreted in a number of cases. In *Loyal Order of Moose v. Salt Lake County*, 657 P.2d 257, 264 (Utah 1982), the Utah Supreme Court discussed "exclusive" and provided guidance on how to apply the exclusive test when a property is used for both exempt and non-exempt purposes, making clear "the constitutional exemption is to be strictly construed and the charitable use of the property must be exclusive . . . ." In C*ounty Bd. of Equalization ex rel. Utah County v. Intermountain Health Care*, 709 P.2d 265, 269 (Utah 1985), regarding "charitable purposes," the Utah Supreme Court stated that "essential to this definition is the element of gift to the community." The court explained that "a gift to the community can be identified either by a substantial imbalance in the exchange between the charity and recipient of its services or in the lessening of a government burden through the charity's operation."[50] The following year the Utah Supreme Court again had occasion to consider what would "constitute charitable" purposes in *Yorgason v. County Bd. of Equalization*, 714 P.2d 653, 657 (Utah 1986). *Yorgason* involved a property that provided housing for low-income elderly and disabled persons. In that case, the Court stated that "the test of charitable purpose is public benefit or contribution to the common good or the public welfare. It is also necessary that there be an element of gift to the community." The Court found that the housing project met both tests, finding a gift to the tenants because they paid well below market rents and noting the low-income housing project "provides a gift to the community since it lessens a government burden." *Id.* at 660.

6. SMRTL argued that rather than adopting the more limited Utah case law interpretations of "used exclusively" and "charitable purposes," the State Tax Commission should consider the broader federal definitions set out in the Federal Regulations, which interpret the term "charitable" in a broad sense. SMRTL pointed to Treas. Reg. § 1.501(c)(3)-1(d)(2) which provides:

> The term *charitable* is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the

[49] In the current version of the Utah Code there is a statutory definition for "charitable purposes" but this did not become effective until tax year 2021. The Tax Commission applies the law in effect for tax year 2020.

[50] In the *IHC* case, the Court set out a six-factor test for nonprofit hospitals to qualify for the exemption based on the Constitution of Utah and statutory provisions in effect at that time. It should be noted that at that time, the requirement that the property be owned by a nonprofit entity did not exist in the constitutional provisions and some of the factors of the six-factor test brought in nonprofit elements that were required both in the constitution and the statutes in effect for tax year 2020.

> broad outlines of *charity* as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

However, as noted by the County in its legal argument at the hearing and its posthearing briefing, the federal income tax exemptions are broader than the Utah property tax exemptions. The County pointed out that Utah's Constitution lists only three non-profit exclusive use exemptions, which are the charitable, religious, and educational exemptions. The County pointed out that 26 U.S.C. 501(c)(3) provides eight different income tax exemptions,[51] including fostering amateur sports competition and scientific purposes exemptions. The County also argued that the term "exclusive" has been interpreted more broadly in federal income tax law than the Utah courts have interpreted that term for the Utah property tax exemption. The County noted that "although 26 U.S.C. 501(c)(3) uses the same "exclusive" language that the Utah Constitution does, 26 C.F.R. § 1.501(c)(3)-1(c)(1) clarifies that "[a]n organization will be regarded as operated exclusively for one or more exempt purposes only if it engages ***primarily*** in activities which accomplish one or more of such exempt purposes . . . (emphasis added)." The County explained that "this is precisely what the Utah Supreme Court rejected in *Loyal Order of Moose*."[52] From review of these decisions, the Utah courts have not looked to the broader federal income tax exemption law to define "used exclusively" or "charitable purposes."[53] The Tax Commission,

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[51] 26 U.S.C. § 501(c) **(**3) provides the following are exempt from federal income tax**:**

> Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

[52] Counties' Post Hearing Reply Brief, pg 3, citing *Loyal Order of Moose v. Salt Lake County*, 657 P.2d 257, 263 (Utah 1982).

[53] The County cites in its Reply Brief, p. 4, ft. 8, Fri*endship Manor Corp. v. Tax Commission*, 487 P.2d 1272, 1276-1277 (Utah 1971) ("The fact that plaintiff is exempt from federal taxation under the provisions of the Internal Revenue Code is not determinative . . . ."); *Utah County v. IHC*, 709 P.2d 265, 275 (Utah 1985) ("Yet Budge decisively rejected . . . the contention that all nonprofit corporations are entitled to a charitable exemption for purposes of property tax"); *Salt Lake County v. ex rel Laborers Local No. 295 Building Ass'n*, 658 P.2d 1192, 1198 (Utah 1983) (Oaks, concurring) ("Nonprofit character and use is necessary, but it is not sufficient"). *See also Eyring Research Institute Inc. v. Tax Commission*, 598 P.2d

therefore, applies the more narrow tests and guidance set out by the Utah courts to determine whether the subject property qualifies for the Utah property tax exemption.

7. It was the County's argument at this hearing that none of SMRTL's activities met the "charitable purposes" requirement. The County also argued that whether some part of SMRTL's activities could be considered charitable was irrelevant because SMRTL did not meet the "used exclusively" requirement for the exclusive use property tax exemption. The County pointed out that SMRTL's work with professional sports organizations to provide for a market fee testing for performance-enhancing and other prohibited substances is clearly not charitable. The facts noted in the findings above establish that this encompasses more than half of the testing provided by SMRTL and accounts for most of SMRTL's revenue. Therefore, the use of the subject property for this non-charitable purpose is not de minimis and the property cannot be considered to be "used exclusively" for charitable purposes. The County's position is consistent with the guidance from the Utah courts. In *Loyal Order of Moose*, the Utah Supreme Court discussed how to apply the exclusive use test when a property is used for both exempt and non-exempt purposes. Discussing a previous case, *Parker v. Quinn*, 64 P. 961 (1901), the Court in *Loyal Order of Moose* noted that when some discreet parts of a property are used exclusively for the charitable purposes, a partial exemption could be granted for those discreet parts. In *Loyal Order of Moose,* at 264, the Court found that the entire property had a mixed use and concluded:

> The evidence reveals that the Lodge's property was not used exclusively for charitable purposes but was used for both charitable and social purposes. Therefore, under the rule that the charitable use must be exclusive . . . , whether the non-charitable use was primary or not primary is not the test. Clearly, the non-charitable use was not de minimus and the property does not qualify for an exemption.

Applying the facts in the subject appeal to the guidance provided by the Court, SMRTL did not demonstrate that some discreet part of the building was actually used only for charitable purposes. Like in Loyal Order of Moose, SMRTL used the building for all of its various testing and other activities. SMRTL does not meet the used exclusively test because a more than de minimis portion of its activities at the subject property are not charitable and there was no indication of a separation of one part of the building used for testing for performance enhancing and other prohibited drugs in professional athletes and one part used exclusively for the testing that SMRTL provided for no charge or at discounted rates.[54] As noted in the Findings of Fact

1348, 1351 (Utah 1979) ("The fact that a person or entity is exempt from federal taxation under the Internal Revenue Code is not determinative of a claim for an exemption under Utah law, though it may be a factor for consideration").

[54] It also became apparent at the hearing that a portion of the building is not currently being used for any purpose except for a possible future increase in testing demands. In *Corporation of the Episcopal Church in*

above, for more than half of the testing that SMRTL conducts, SMRTL is testing professional athletes for performance enhancing and other prohibited substances and charging market rates for the testing performed. There is no case law or statutory support for SMRTL's contention that this qualifies as "charitable" purposes. Less than half of SMRTL's testing is at a discounted rate, which SMRTL argues is a charitable purpose. As noted by the County, "for purposes of the exclusive use test, it is irrelevant how much charity a non-profit provides if the property is also being used for non-charitable activities. The only question when there are non-charitable activities mixed with charitable ones is whether those non-charitable activities are de minimis. As beneficial as SMRTL's other activities are to non-professional sports, the fact remains that SMRTL's activities relating to for-profit professional sports do not qualify as charitable activities."[55]

8. SMRTL argued at the hearing that performance enhancing and banned substance testing that SRMTL provided at a market price to the professional sports league was a necessary element of its charitable activities. SMRTL's witnesses testified that charging the full price for these services was the reason that SMRTL was able to provide the discounted or free testing as these were subsidized from the full price fees. SMRTL also argued that testing the professional league athletes was necessary for SMRTL's research and ability to alert government agencies and the public about dangerous or illegal products. However, as the County pointed out in its post hearing briefing, the argument that selling services at a market price to raise revenue for subsidized and discounted testing was rejected by the Court in *Quinn*. In *Quinn*, a Relief Society rented a portion of its building to tenants to raise revenue to help its charitable purposes of ministering to the poor. Despite the use of that revenue to fulfill its charitable activity, the Court found that raising revenue, even to carry out charitable activities, is not a charitable purpose. Accordingly, the Court denied the exemption for the portion of the property used to raise revenue. In the subject appeal SMRTL is arguing that it is raising revenue through its commercial activities of conducting testing of professional athletes and charging market rates, so that it can use the revenue generated from the commercial activities to carry out charitable activities. Based on the Court's reasoning in *Quinn,* SMRTL's commercial activities could not be considered charitable activities even if it were shown that the proceeds from the commercial activities were used to fund charitable activities. Since SMRTL's commercial activities are not de minimis, SMRTL has failed to establish that the property met the "used exclusively" for charitable purposes requirement.

Utah v. Commission, 919 P.2d 556, 559 (Utah 1996) the Court held that reserving property for a future purpose defeats the exemption.

[55] County's Prehearing Brief, pg. 9.

9. Regarding SMRTL's argument that the testing for the professional sports leagues was necessary for its research, the County pointed to the court's decision in *Eyring Research Institute Inc. v. Tax Commission,* 598 P.2d 1348 (Utah 1979). In *Eyring* the court set out a test applicable to determining whether a research institution was using property for charitable purposes. Eyring was a non-profit research institution organized "for the purpose of undertaking scientific research projects which it deems to be in the public interest."[56] The Court in *Eyring* found Eyring "failed to sustain its burden of proving entitlement to the exemption" finding it did not operate "exclusively for . . . charitable purposes." In *Eyring* the court noted five factors it had considered[57] and concluded, "we need not, and we do not, conclude that any single characteristic listed above is fatal to the assertion of an exemption as a charity. Each claim for the exemption must be reviewed on its own facts."[58] In its argument the County weighed each of the *Eyring* factors and argued they weighed against SMRTL's research activity meeting the charitable purposes standard.[59] Ultimately the Commission need not reach a conclusion based on the law in

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[56]*Eyring Research Institute Inc. v. Tax Commission,* 598 P.2d 1348, 1349-1350 (Utah 1979).

[57] The five factors listed in *Eyring* are as follows:

> 1. Almost half of Petitioner's research efforts were expended for the Department of Defense in areas not recognizable as charitable.
> 2. Petitioner's efforts are circumscribed by individual employment contracts and are thus focused on a finite and ascertainable number of individual clients, benefiting the public only incidentally.
> 3. The benefits realized by the State of Utah and its political subdivisions because of the use to which Petitioner devotes its property are not sufficient to justify an exemption.
> 4. Petitioner's willingness to restrict disclosure of its findings at the request of a nongovernmental client might assist that client in acquiring a proprietary interest in data developed by the Petitioner, precluding the public's access to Petitioner's research.
> 5. If Petitioner's function as a disseminator of scientific information is paramount to its purpose of satisfying its individual clients under the terms of its employment contracts, the record fails to demonstrate it.

Eyring Research Institute v. Tax Com'n of Utah, 598 P.2d 1348, 1351 (Utah 1979).

[58] *Eyring*, 598 P.2d 1348, 1351.

[59] The County provided this *Eyring* analysis at page 24 of its Prehearing Brief:

> In denying the exemption, the court noted several concerns, most of which apply to SMRTL to an even greater degree. First, the Court explained that almost half of Eyring's research efforts were for the Department of Defense in areas the Court did not view as charitable. SMRTL's activities raise a similar, but even more significant, concern. Eyring's non-charitable activities were mostly conducted for governmental entities. SMRTL, in contrast, has more than half of its activities conducted for for-profit professional sports organizations. If Eyring failed to qualify because half of its work was for the Department of Defense, SMRTL surely fails to qualify given its work with for-profit professional sports.
>
> Second, the Court pointed out that Eyring's efforts were focused on individual clients and the public was benefited only incidentally. Again, this concern applies equally to SMRTL. Just as Eyring sold its services to individual clients, so does SMRTL. While the public indirectly benefited from both Eyring and SMRTL's activities, the public is not a direct charitable recipient in either case.

effect for tax year 2020 as to whether SMRTL's activities of providing free and subsidised testing for performance enhancing and banned substances to nonprofit or government entities, some free testing for research or medical cases and conducting and publishing research meets the charitable purposes requirement, because even if that was found to be the case, the "used exclusively" requirement contained in Article XIII, Section 3 of the Utah Constitution and Utah Code §59-2-1101(3)(a), has not been shown to be met due to the fact that there is more than a de minimis use of the property for testing provided to professional athletes at a full market price.

Based on the findings of fact and conclusions of law noted herein, Petitioner's appeal should be denied for tax year 2020.

Jane Phan
Administrative Law Judge

Third, the Court noted the benefits realized by the government was not sufficient to justify its exemption. Since 96% of Eyring's work was performed for the government, Eyring had a much better argument than SMRTL that it was lessening a government burden. But the Court found that offering activities to governmental entities was not sufficient if they were not charitable activities. SRMTL provides much less of its services to governmental entities than Eyring did. If Eyring's activities for the government were insufficient for exemption, then SMRTL's much fewer activities for the government is even less sufficient.

Fourth, the Court was concerned that Eyring was willing to restrict disclosure of its findings at the request of a nongovernmental client, precluding the public's access to the research. While there is no evidence that SMRTL restricts any of its findings as Eyring did, it is also true that SMRTL's research is not geared towards the public and none of its articles are posted on its website. As even SMRTL's President affirmed, most of the public would not be able to understand most of SMRTL's research papers. There is no direct benefit to the public from SRMTL and it is at best only indirect. It would also be surprising if SMRTL's for-profit clients (or any of its clients) were disclosing their test results to the public. At least, SMRTL has not provided any evidence that the public has access to client's test results.

Finally, the Court found that the record did not support finding that Eyring's dissemination of scientific information was paramount to satisfying its individual clients. The same can be said of SMRTL. SMRTL's significant activities and connections with professional sports shows that for-profits play a large part in SMRTL's work. And at least in Eyring, 96% of its clients were governmental entities. But even governmental entities as clients were still a concern for the Court because it was the clients who Eyring directly worked for rather than the general public. Again, SMRTL is in a much worse position than Eyring was since such a large number of SMRTL's clients are for-profit clients compared with Eyring.

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies Petitioner's appeal seeking the exclusive use property tax exemption for the subject property for tax year 2020. It is so ordered.

DATED this **30th** day of **August**, 2022.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

STATE TAX COMMISSION SEAL STATE OF UTAH

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.

Addendum 2

Utah Const. art. XIII, § 2

Article XIII, Section 2 [Property tax.]

(1) So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the State that is not exempt under the laws of the United States or under this Constitution shall be:

(a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and

(b) taxed at a uniform and equal rate.

(2) Each corporation and person in the State or doing business in the State is subject to taxation on the tangible property owned or used by the corporation or person within the boundaries of the State or local authority levying the tax.

(3) The Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.

(4) The Legislature may by statute determine the manner and extent of taxing livestock.

(5) The Legislature may by statute determine the manner and extent of taxing or exempting intangible property, except that any property tax on intangible property may not exceed .005 of its fair market value. If any intangible property is taxed under the property tax, the income from that property may not also be taxed.

(6) Tangible personal property required by law to be registered with the State before it is used on a public highway or waterway, on public land, or in the air may be exempted from property tax by statute. If the Legislature exempts tangible personal property from property tax under this Subsection (6), it shall provide for the payment of uniform statewide fees or uniform statewide rates of assessment or taxation on that property in lieu of the property tax. The fair market value of any property exempted under this Subsection (6) shall be considered part of the State tax base for determining the debt limitation under Article XIV.

Addendum 3

Utah Const. art. XIII, § 3

Effective 1/1/2019

Article XIII, Section 3 [Property tax exemptions.]

(1) The following are exempt from property tax:

(a) property owned by the State;

(b) property owned by a public library;

(c) property owned by a school district;

(d) property owned by a political subdivision of the State, other than a school district, and located within the political subdivision;

(e) property owned by a political subdivision of the State, other than a school district, and located outside the political subdivision unless the Legislature by statute authorizes the property tax on that property;

(f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes;

(g) places of burial not held or used for private or corporate benefit;

(h) farm equipment and farm machinery as defined by statute;

(i) water rights, reservoirs, pumping plants, ditches, canals, pipes, flumes, power plants, and transmission lines to the extent owned and used by an individual or corporation to irrigate land that is:

(i) within the State; and

(ii) owned by the individual or corporation, or by an individual member of the corporation; and

(j)

(i) if owned by a nonprofit entity and used within the State to irrigate land, provide domestic water, as defined by statute, or provide water to a public water supplier:

(A) water rights; and

(B) reservoirs, pumping plants, ditches, canals, pipes, flumes, and, as defined by statute, other water infrastructure;

(ii) land occupied by a reservoir, ditch, canal, or pipe that is exempt under Subsection (1)(j)(i)(B) if the land is owned by the nonprofit entity that owns the reservoir, ditch, canal, or pipe; and

(iii) land immediately adjacent to a reservoir, ditch, canal, or pipe that is exempt under Subsection (1)(j)(i)(B) if the land is:

(A) owned by the nonprofit entity that owns the adjacent reservoir, ditch, canal, or pipe; and

(B) reasonably necessary for the maintenance or for otherwise supporting the operation of the reservoir, ditch, canal, or pipe.

(2)

(a) The Legislature may by statute exempt the following from property tax:

(i) tangible personal property constituting inventory present in the State on January 1 and held for sale in the ordinary course of business;

(ii) tangible personal property present in the State on January 1 and held for sale or processing and shipped to a final destination outside the State within 12 months;

(iii) subject to Subsection (2)(b), property to the extent used to generate and deliver electrical power for pumping water to irrigate lands in the State;

(iv) up to 45% of the fair market value of residential property, as defined by statute;

(v) household furnishings, furniture, and equipment used exclusively by the owner of that property in maintaining the owner's home; and

(vi) tangible personal property that, if subject to property tax, would generate an inconsequential amount of revenue.

(b) The exemption under Subsection (2)(a)(iii) shall accrue to the benefit of the users of pumped water as provided by statute.

(3) The following may be exempted from property tax as provided by statute:
(a) property owned by a disabled person who, during military training or a military conflict, was disabled in the line of duty in the military service of the United States or the State;
(b) property owned by the unmarried surviving spouse or the minor orphan of a person who:
(i) is described in Subsection (3)(a); or
(ii) during military training or a military conflict, was killed in action or died in the line of duty in the military service of the United States or the State; and
(c) real property owned by a person in the military or the person's spouse, or both, and used as the person's primary residence, if the person serves under an order to federal active duty out of state for at least 200 days in a continuous 365-day period.
(4) The Legislature may by statute provide for the remission or abatement of the taxes of the poor.