

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WESTERN CENTER FOR RUSSIAN JEWRY, INC.,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR.</p>	<p>Docket No.: 55359</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 15, 2011, James R. Meurer and Louesa Maricle presiding. Petitioner was represented by Charles Goldberg, Esq., Mark G. Grueskin, Esq., and Christopher D. Freeman, Esq. Respondent was represented by Robert H. Dodd, Esq. Petitioner is requesting a property tax exemption on the subject property for tax years 2003 through 2009.

At the outset of the hearing, both parties agreed that tax exempt status has been granted to Petitioner for tax years 2008 and 2009. Therefore, Petitioner is requesting tax exempt status on the subject property for tax years 2003 through 2007.

Subject property is described as follows:

**295 South Locust Street, Denver, Colorado
Denver County Parcel No. 608325019**

The subject property consists of a religious facility including a place of worship, lecture hall, conference room, and accessory uses. The use has remained unchanged since prior to the 2003 sale of the property to Petitioner.

Petitioner contends that Respondent denied a retroactive application of the exemption to the property purchase date in 2003 and thereby improperly assessed the religious use and corresponding exemption of the subject property. The previous owner was obligated by Jewish law to find another qualified Jewish organization as the buyer. For that reason, Petitioner contends that the purchase of the subject property in 2003 was not based on the fair market value of the property and was not an

arm's-length transaction. Petitioner claims that Respondent improperly removed the exemption status following this sale.

Respondent contends that the Petitioner failed to file an application for exemption for the subject property after it was purchased in 2003. Petitioner filed an application in 2009 and the PTA granted exemption for tax years 2008 and 2009, the tax year the petition was made and one year before, but is barred by statute from granting a retroactive exemption prior to the period the law allows. Respondent contends that timely filing is the only issue in this case.

Petitioner provided witness testimony regarding the use of the property prior to and following Petitioner's purchase of the property in 2003. Rabbi Sirota appeared as witness for Petitioner and testified that it was his belief that the property was tax exempt before the 2003 sale to Petitioner and would continue to be exempt following the sale. Rabbi Sirota testified that he received the notices of valuation and tax statements after 2003, but thought them to be only a formality that required no action because he believed the property was exempt. It was not until he received the notice in 2009 that the property would be sold at tax sale that he obtained legal advice and further investigation was made. Due to a publishing technicality, the property was not auctioned. Petitioner did subsequently pay a portion of the delinquent tax. In 2009, Petitioner filed an application for exemption with Respondent and it was granted for tax years 2008 and 2009.

Ms. Lisa Hakonson, a property tax specialist handling exemptions with the PTA, testified for Respondent. Ms. Hakonson testified that as a result of her investigation following Petitioner's 2009 application, the PTA granted exemption. Exempt status is granted to the property owner and does not run with the land. Exempt status is removed by Respondent following the transfer of ownership of the property and the new owner must file a new application for exemption. The new owner and the specific use of the property must be qualified by Respondent before exemption is granted. Petitioner did not file the required application until 2009. The witness testified that according to Section 39-2-117, C.R.S., exempt status could only be granted for the year in which the application was filed and one year before. Regarding the tax exempt status before Petitioner's purchase of the property in 2003, Ms. Hakonson testified that Respondent does not have any record that the previous owner was granted exemption. If Denver County assigned exempt status to the property, it did so without due authorization from Respondent. Regardless, exempt status would be removed following a sale of the property. There is no automatic exemption based on a previous owner or use.

The Board concludes that Petitioner's claim that the 2003 purchase of the property did not represent fair market value and was not an arm's-length transaction is not relevant. It is the ownership transfer from one party to another that is relevant in this case. The Assessor's Reference Library (ARL), Vol. 2, page 10.24, states in part:

[E]xemptions are conditioned upon the nature of the owner, user, if applicable, and the specific use of the property. All such exemptions must be determined by the Property Tax Administrator upon the written application of the owner. Each application is reviewed, and if it is determined that the exemption is justified and in accordance with the intent of the law, the exemption is granted. The exemption is to be effective upon such date as the Administrator shall determine, but in no event

shall such exemption apply to any year prior to the year preceding the year in which application is made, as specified in § 39-2-117(1)(a), C.R.S.

Case law also details the nature of exemptions. In a case where a church qualifying for an exemption was sold to another church, under article X, section 5 of the Colorado Constitution, the court found that the previously issued exemption ended with the sale of the property and did not run with the land but required the subsequent church to apply for an exemption. *St. Mark Coptic Orthodox Church v. Bd. of Assessment Appeals*, 762 P.2d 775 (Colo. App. 1988).

The Board finds that the prior exempt status, if any, ended when ownership of the property transferred. Petitioner being unaware of the State's property tax laws regarding exemption does not relieve Petitioner's responsibility to file a new written application with the PTA.

Furthermore, Petitioner's request to have the exemption applied retroactively for tax years 2003 through 2007 is not supported by statute. Petitioner's failure to file an application for exemption before 2009 is undisputed. Section 39-2-117(1)(a)(I), C.R.S. regarding applications for exemption from property tax, provides that:

The administrator shall examine and review each application submitted, and, if it is determined that the exemption therein claimed is justified and in accordance with the intent of the law, the exemption shall be granted, the same to be effective upon such date in the year of application as the administrator shall determine, but in no event shall the exemption apply to any year prior to the year preceding the year in which application is made.

Respondent, through its rulemaking authority granted pursuant to section 39-2-117(7) has defined "year in which application is made" to mean "the year authenticated by the United States Postal Service according to 39-1-120, C.R.S., or if no such record is present, the date that is date-stamped on the application by either the assessor or division of property taxation." Regulation I.A.28, 8 Code Colo. Reg. 1304-2. According to Respondent, since Petitioner's application for tax exemption was made in 2009, Petitioner is entitled to exemption for tax year 2009, and one year preceding 2009, or tax year 2008.

Petitioner contends that Respondent's interpretation of Section 39-2-117(1)(a)(I), C.R.S. is incorrect, and that the proper interpretation of "year in which application is made" should be based on the year requested in the exemption application and not the date the application was submitted to Respondent. Petitioner's argument is based upon the fact that "made," "filed," and "submitted" are all used in Section 39-2-117(1)(a)(I) and therefore must be given distinct meanings.

The interpretation of a statute by an agency charged with its administration is entitled to deference. *El Paso County Bd. of Equaliz. v. Craddock*, 850 P.2d 702, 704 (Colo. 1993). However, a reviewing court is not bound by an agency decision which misconstrues the law. *Id.* at 704-5.

The primary goal in statutory interpretation is to find and give effect to legislative intent. *Moffett v. Life Care Centers of America*, 187 P.3d 1140, 1143 (Colo. App. 2008), *aff'd* 219 P.3d 1068 (Colo. 2009) (citations omitted). A reviewing court must "first look to the language of the

statute, giving words and phrases their plain and ordinary meaning” and must “interpret the statute in a way that best effectuates the purpose of the legislative scheme.” *Id.* A reviewing court must “consider the statute as a whole and interpret it in a manner giving consistent, harmonious, and sensible effect to all its parts. In doing so, a court should not interpret the statute so as to render any part of it either meaningless or absurd.” *Id.* at 1143-4.

The Board, giving deference to Respondent’s interpretation of this statute, finds that Respondent properly applied Section 39-2-117(1)(a)(I), C.R.S. to Petitioner’s application for property tax exemption for the subject property. Petitioner’s reading of Section 39-2-117(1)(a)(I), C.R.S. renders the phrase “but in no event shall the exemption apply to any year prior to the year preceding the year in which application is made” meaningless because it offers no real limit to a property tax exemption when it could apply retroactively to any year listed on the application, plus a preceding year.

The Board concludes that Petitioner’s argument that retroactive exemption based on continuous religious use, in the absence of proper application with the PTA, is not supported by law. Therefore, the Board concludes Respondent properly denied Petitioner’s request for tax exempt status for tax years 2003 through 2007.

Respondent presented sufficient probative evidence and testimony to prove that denial of the retroactive property tax exemption for tax years 2003 through 2007 was correct.

ORDER:

The petition is denied.

APPEAL:

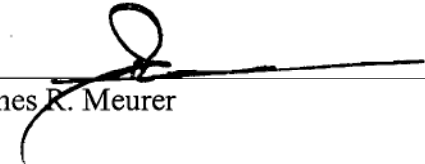
If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).


If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

Section 39-2-117(6), C.R.S.

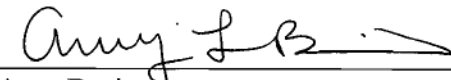
DATED and MAILED this 20 day of May 2011.

BOARD OF ASSESSMENT APPEALS


James R. Meurer


Louesa Maricle

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.


Amy Bruins

