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The Idaho Youth Ranch v. Ada County Board of Equalization Appellant's Brief Dckt. 41256

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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE IDAHO YOUTH RANCH,
INC., IDAHO YOUTH RANCH
NAGEL CENTER, LLC,

Petitioner-Appellant

vs.

ADA COUNTY BOARD OF
EQUALIZATION,

Respondent.

Supreme Court Case No. 41256

APPELLANT'S BRIEF

Appeal from the District Court of the Fourth Judicial District for Ada County
Honorable Melissa Moody, District Judge, presiding

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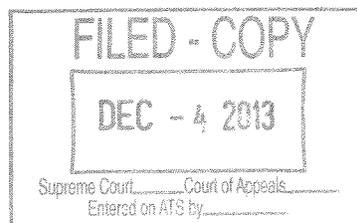


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STATEMENT OF THE CASE

1. Nature of the Case

This case concerns the charitable property tax exemption set forth in Idaho Code § 63-602C. In 2008, the Idaho Legislature added “charitable limited liability companies” to the list of organizations qualifying for the charitable property tax exemption. This appeal appears to be the first Idaho appellate case construing the statute with respect to property owned by a “charitable limited liability company.”

The property here in question was used by the Petitioner-Appellant, The Idaho Youth Ranch, Inc., for charitable activities to help Idaho children and their families. Respondent, the Ada County Board of Equalization, however, denied an application for a charitable property tax exemption because the property was held by the Youth Ranch’s wholly-owned limited liability company – the Idaho Youth Ranch Nagel Center, LLC.

The Idaho Youth Ranch Nagel Center, LLC (hereinafter “the LLC”) supported the charitable activities of The Idaho Youth Ranch, Inc., (hereinafter “Youth Ranch”) by providing a building facility for those activities to take place. The parties disagree as to whether this building facility qualifies for the charitable exemption provided by the statute.

2. Course of the Proceedings

Petitioner-Appellant, The Idaho Youth Ranch, applied for a property tax exemption for the 2011 tax year as a charitable organization pursuant Idaho Code § 63-602C. The Ada County Board of Equalization denied the application. The Youth Ranch appealed to the Idaho Board of Tax Appeals, which affirmed the denial of exemption. The Youth Ranch further appealed to the

district court. Both parties moved for summary judgment. On summary judgment, the District Court of the Fourth Judicial District affirmed the denial. The Youth Ranch filed this appeal.

3. Statement of Facts

The record in this case establishes the following facts:

a. The Idaho Youth Ranch, Inc.

The Idaho Youth Ranch, Inc. has been recognized as a 501(c)(3) charitable organization since 1954. (Transcript (TR) 17, LN. 15-23 and Exhibit 1 (IRS 501(c)(3) letter)). The stated purposes of the Youth Ranch may be found in various documents including its Articles of Incorporation (Supplemental Exhibit) and its annual Federal Form 990 Return (Exhibit 14).

These purposes are stated to be “charitable,” and, more specifically:

[T]o provide troubled children and their families a bridge to a valued, responsible and productive future. To that end the Youth Ranch is established to:... establish, maintain and operate facilities for the development of juveniles or young persons;... establish adoption agencies;... **establish other organizations... to assist in the advancement of the charitable purposes of the Idaho Youth Ranch.**

(Supplemental Exhibit, page 1) (Emphasis added).

The Youth Ranch has three residential units for children: one in Coeur d’Alene, which provides drug and alcohol treatment to children up to age 18; one in Boise (“Hays House”); which provides a shelter for unaccompanied youth; and the original “Ranch” in Rupert. Many of the children served have been previously abused. The children benefit from counselors, who help the children correct some of the thinking errors that they have and work through some of the difficulties they have experienced. (TR 11, LN 1-23).

Children at the Rupert facility also participate in animal therapy with horses and other animals. Testimony concerning this therapy suggests it benefits these children in ways such as learning to have empathy for their animals and thereby learning to have empathy for themselves. These children often report that the Youth Ranch has saved their lives. Many had tried to commit suicide in the past. (TR 11, LN 23 to TR 12, LN 9).

The Youth Ranch provides counseling to families to help integrate the children into a good family situation after a child leaves one of the residential facilities. (TR12, LN 12 to TR 13, LN 5).

The Youth Ranch has also provided adoption services. At the time of the property tax assessment in this case, the Youth Ranch provided foster care recruitment and training for foster parents. (TR 13, LN 15-24).

The Youth Ranch uses the federal poverty guidelines to price services to recipient families. The amount charged is less than the cost of those services. (TR 16, LN 25 to TR 17, LN 12).

The Youth Ranch receives millions of pounds of donated items which are either sold through one of its 27 thrift store locations or recycled. Many of these items would otherwise end up as waste in landfills. (TR 14, LN 17; TR 15, LN 1-2; and TR 16, LN 1-9).

The Youth Ranch operates a used car lot where donated cars are sold. Additionally, the Youth Ranch assists BSU Radio with its own fundraising by selling cars donated to BSU Radio. (TR 14, LN 19-25).

Some of the services provided by the Youth Ranch – especially drug and alcohol treatment programs – are contracted for by the government or otherwise replace government services. (TR 16, LN 10-24).

b. Acquisition of the Subject Property

In 2006, the Youth Ranch desired to purchase a complex where it could have central distribution, executive offices, and a place for southern Idaho community services. (TR 19, LN 6-10).

The Youth Ranch was approached by Nagel Beverage Company. Nagel Beverage Company wanted to sell its property to the Youth Ranch for an amount \$1,136,000 less than the property's appraised value and donate this amount of equity as a charitable contribution. (TR 19, LN 10-16).

There was not much time to complete the transaction because the Nagel Beverage Company was making the sale is part of a 1031 exchange. (TR 19, LN 12, TR 20 LN 5-8) [Note: Section 1031 requires replacement property exchanged to be identified within 45 days, and closed within 180 days, of property transferred. See 26 USC §1031].

Additionally, the lender – KeyBank – wanted the Youth Ranch to set up an LLC to hold the property to facilitate qualification of the loan in time to close the transaction. (TR 20, LN 8-13).

c. The LLC

The Articles of Incorporation of the Youth Ranch expressly authorized the Youth Ranch to establish other organizations to assist in the advancement of the charitable proposes of the Idaho Youth Ranch. (Supplemental Exhibit, page 1). The Idaho Youth Ranch Nagel Center, LLC (“the LLC”) was created on August 15, 2006. (Exhibit 3).

Initially, the Idaho Youth Ranch Foundation, Inc. (“the Foundation”) managed the LLC. The Foundation was a separate charitable organization recognized under Section 509(a)(3) of the

Internal Revenue Code as a “support organization”; its sole charitable function was to support a 501(c)(3) charitable organization, in this case, the Youth Ranch. The Foundation also managed scholarships for children that graduated from the Ranch program and it performed other support functions. (TR 18, LN 3-25; TR 21, LN 13-15).

On March 3, 2010 the Foundation was merged with the Youth Ranch. The Youth Ranch therefore became the sole owner and manager of the LLC. (See TR 21, LN 13-18).

The LLC was named “Idaho Youth Ranch Nagel Center, LLC” in honor of the charitable contribution made by the Nagel Beverage Company. A contractual provision in the agreement with the Nagel Beverage Company required that: “for so long as buyer owns and holds the property for **charitable purposes**, the property shall be operated under the name Idaho Youth Ranch Nagel Center or similar name approved by Nagel.” (Emphasis added) (TR 26, LN 19 to TR 27, LN 16 and Exhibit 8, Addendum paragraph D).

Under Federal Law, the LLC is treated as a “disregarded entity” and therefore part of the Idaho Youth Ranch. Consequently, the Youth Ranch’s charitable exemption status extended to the LLC. (TR 20, LN 22 to TR 21, LN 12).

The LLC’s activities were reported under Generally Accepted Accounting Principles (GAAP) on the financial statements of the Youth Ranch. Under GAAP, the activities of the LLC were treated as those of the Youth Ranch. No separate financial statements were prepared for the LLC. (TR 29, LN 2-23).

Similarly, the LLC’s activities were reported on IRS Form 990 the federal exempt organization tax return for the Youth Ranch. (TR page 21, LN 17-18).

Form 990 states the charitable purpose of the Youth Ranch, which was also a statement of purpose for the LLC. (Exhibit 14 and TR 30, LN 2-21).

Additionally, Nancy Proctor, the Youth Ranch's Vice President, Treasurer and Chief Financial Officer stated on direct examination that the purpose of the LLC was to "support the Youth Ranch" and maintain the building for the Youth Ranch so that it could secure preferential financing for the building. (TR 21, LN 22 to 25). On cross examination, Ms. Proctor was asked the following question:

Q. But what does it [the LLC] have to provide for charitable activities?

A. It has a building

(TR 61, LN 21 to 23).

The building also provided the Youth Ranch with a critical distribution center, executive offices and a place for southern Idaho community services. (TR 19, LN 6-10).

The property provides public benefit from the millions of pounds of donations received there. Services to children and families were provided from that location. Adoptions were also arranged from that property. (TR 32, LN 12-21).

Besides the charitable activities of Youth Ranch, the Police Department was permitted to use the property after hours to train police dogs. Drugs are hidden in donated clothing for dogs to find. (TR 51, LN 12 to TR 52, LN 3).

d. The Non-Commercial Nature of the Lease

The lease between the LLC and the Youth Ranch was not entered into for profit. (TR 26, LN 11-18). Rather, the rent was set at an amount equal to the mortgage payments, only. (TR 23, LN 21 to TR 24, LN 7). Since the property was acquired in a part-gift transaction, it was believed that the rent was below-market. (TR 25, LN 23 to TR 26, LN 8).

Moreover, if, hypothetically a “profit” had been made by the LLC (i.e. the “landlord”) such profit would have been reported under generally accepted accounting principles (GAAP) on the financial statement and tax return of the Youth Ranch (i.e. the “tenant”). (TR 29, LN 2 -23).

The fact that the lease arrangement was not an arm’s length transaction was specifically stated in the bank’s lending documents (TR 22, LN 8-25 and Exhibit 6, page 1). Moreover, the tenant (Youth Ranch) was required to guarantee the landlord’s (LLC) mortgage. (TR 23, LN 1-20 and Exhibit 7).

On August 25, 2011 the subject property owned by the LLC was conveyed to the Youth Ranch. The LLC was then merged into the Youth Ranch, with the Youth Ranch as the only surviving entity. (TR 30, LN 22 to TR 31, LN 24; and Exhibits 15 and 16).

e. Charitable Contributions

In addition to the charitable contribution made by the Nagel Beverage Company when the property was acquired, the Youth Ranch also received a \$350,000 matching charitable grant from the ALSAM Foundation for remodeling and equipment for the subject property. (See Exhibit 11). These funds were matched by donations from the public. (See Exhibit 12 and TR 27, LN 24 to TR 29, LN 1).

The money used to pay the property taxes here in question came from donations from the public. This money would otherwise have been used to pay for the charitable activities of the Youth Ranch in supporting Idaho children and their families, specifically the treatment of children, and the provision of counseling and residential services. (TR 33, LN 1-9).

ISSUE PRESENTED ON APPEAL

The sole issue presented in this appeal is whether property used by The Idaho Youth Ranch, Inc., and held through its wholly owned LLC, qualified for a charitable property tax exemption under Idaho Code Section 63-602C.

STANDARD OF REVIEW

An appeal from the Board of Tax Appeals to the district court is governed by Idaho Code § 63-3812(c), which provides:

Appeals [from the board of tax appeals to the district court] may be based upon any issue presented by the appellant to the board of tax appeals and shall be heard and determined by the court without a jury in a trial de novo on the issues in the same manner as though it were an original proceeding in that court.

In this case, the district court decided the appeal in a summary judgment proceeding. The Supreme Court has articulated the standard for reviewing the district court's decision as follows:

The proper standard of review in this case is the standard generally employed for reviewing an appeal from an order of summary judgment. When this Court reviews a district court's decision on summary judgment this Court employs the same standard used by the district court in reviewing the motion. The facts will be construed in favor of the non-moving party. *Id.* "Summary judgment is appropriate if there are no genuine issues of material fact and the case can be decided as a matter of law. The construction and application of a legislative act are pure questions of law as to which the Supreme Court exercises free review."

Ada County Bd. of Equalization v. Highlands, Inc., 108 P.3d 349, 353, 141 Idaho 202, 206 (Idaho 2005) (internal citations omitted); *citing Roeder Holdings, L.L.C. v. Bd. of Equalization of Ada County*, 136 Idaho 809, 41 P.3d 237 (2001)

ARGUMENTS

Idaho statutes have long recognized property tax exemptions for religious and charitable *corporations*, but only recently have the statutes extended such exemptions explicitly to religious and charitable *limited liability companies*. In 2008, the Idaho Legislature added limited liability companies to the property tax exemption statutes dealing with religious and charitable organizations. Thus codified, Idaho Code § 63-602B, provides an exemption for “religious limited liability companies” and Idaho Code Section 63-602C provides a property tax exemption for “charitable limited liability companies.” It is this later statute which is at issue here.

Idaho Code §63-602C provides in its entirety as follows:

63-602C. Property exempt from taxation—Fraternal, benevolent, or charitable limited liability companies, corporations or societies. **The following property is exempt from taxation: property belonging to any fraternal, benevolent, or charitable limited liability company, corporation or society, the World War veteran organization buildings and memorials of this state, used exclusively for the purposes for which such limited liability company, corporation or society is organized; provided, that if any building or property belonging to any such limited liability company, corporation or society is leased by such owner or if such limited liability company, corporation or society uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purposes for which such charitable organization exists, then the same shall be assessed and taxed as any other property, and if any such property is leased in part or used in part by such limited liability company, corporation or society for such purposes the assessor shall determine the value of the entire building and the value of the part used or leased for commercial purposes. If the value of the part used for commercial purposes is determined to be three percent (3%) or less than the value of the entirety, the whole of said property shall remain exempt.** If the value of the part used for commercial purposes is determined to be more than three percent (3%) of the value of the entirety, the assessor shall assess such proportionate part of such building including the value of the real estate as is so leased or used for such purposes, and shall assess the trade fixtures used in connection with the sale of all merchandise; **provided however, that the lease or use of any property by any such limited liability company, corporation or society for**

athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums or club rooms within the purposes for which such limited liability company, corporation or society is organized, shall not be deemed a business or commercial purpose, even though fees or charges be imposed and revenue derived therefrom.

(Emphasis added).

The statute sets forth two requirements: (1) the subject property must belong to a charitable organization identified in the statute; and (2) be used exclusively for the organization's charitable purposes. The statute also provides additional detail with respect to the "use" requirement, limiting business or commercial leasing "not directly related" to the charitable purposes of the organization. In particular, only that portion of the property used or leased for "commercial purposes" in excess of 3% of the value the property, is subject to taxation.

The last sentence of the statute also provides a safe harbor for various types of revenue-generating leases such as recreational facilities, dormitories, residence halls, meeting rooms or halls, etc.

In addition to the language of the statute, two Idaho Supreme Court cases provide insight into the use and ownership requirements identified in the statute as applied to this case. These cases are *Boise Central v. Board of Ada County Commissioners*, 122 Idaho 67 (1992) and *Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 100, 675 P.2d 813 (1984), which are discussed below.

1. Boise Central v. Board of Ada County Commissioners

In *Boise Central*, a nonprofit corporation – The Boise Central Trades and Labor Council, Inc. – owned a building where it leased office space to its members. Its members included local labor unions and other organizations affiliated with the AFL-CIO. Additionally, some office space was also rented to unrelated, nonmembers (an insurance company and credit union). A

property tax exemption was sought pursuant to Idaho Code § 63-105C (the predecessor statute to Idaho Code §63-602C) as a fraternal organization.

The Idaho Supreme Court held that the record supported the finding that the portion of the property leased to its members qualified for the property tax exemption. In so holding, the Supreme Court quoted the statute and stated: “it is clear that the legislature intended to exclude from exemption only those portions of an otherwise exempt property which are leased or used for *commercial purposes*.” *Boise Central* at 72 (emphasis original).

The Supreme Court found that property leased to its members was consistent with the purpose of the organization and not undertaken for commercial purposes. The Supreme Court also noted that renting office space to the nonprofit organization’s members was “analogous” to renting residence halls or dormitories which are specifically deemed “non-commercial” by the last section of the statute. *Id.* at 72.

In the present case, the Idaho Youth Ranch Nagel Center, LLC leased all of the subject property to its only member, the Idaho Youth Ranch, Inc. (TR 21, LN 13-18). Therefore, the lease arrangement is like that in *Boise Central*, where the portion of the property leased to its members was held to be exempt. The lease in both cases was non-commercial.

Moreover, additional evidence in the present case shows that the lease between the LLC and the Youth Ranch was not entered into for commercial purposes. It was not a commercial lease because: testimony established that the lease was not entered into for-profit (TR 26, LN 11-18); the rent was set at an amount equal to the mortgage payments only (TR 23, LN 21 to TR 24, LN 7); it was believed that the rent was below-market (TR 25, LN 23 to TR 26, LN 8); if hypothetically a “profit” had been made by the LLC, such profit would have been reported under generally accepted accounting principles (GAAP) on the financial statement and tax return of the

Youth Ranch (TR 29, LN 2 -23); and the statement in the lending documents that specifically stated that the lease arrangement was not an arm's length transaction (TR 22, LN 8-25 and Exhibit 6, Page 1). Moreover, the tenant (Youth Ranch) was required to guarantee the landlord's (LLC) mortgage. (TR 23, LN 1-20 and Exhibit 7). These factors would not be present in a commercial lease arrangement.

Finally, the lease was consistent with the purpose for which the LLC was created. The LLC was created to advance the charitable purposes of the Idaho Youth Ranch by providing a building for those charitable activities to take place.

2. Canyon County v. Sunny Ridge Manor, Inc.

The second relevant Idaho Supreme Court decision concerning the charitable property tax exemption is *Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 100, 675 P.2d 813 (1984). Although this case predates the amendment of Idaho Code § 63-602C that added charitable limited liability companies, the Court set forth a nonexclusive list of eight factors to analyze a charitable organization's exemption: (1) the stated purposes of its undertaking, (2) whether its functions are charitable, (3) whether it is supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is a general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go up on dissolution of the Corporation, and (8) whether the "charity" provided is based on need. A charitable organization is not required to possess all of these factors and other factors may also be considered. *Id.*, at 100, 675 P.2d at 815. However, each of these eight factors are discussed below.

(1) Purpose: The stated purpose of an organization is one factor which can indicate it is a charitable organization. In this case, the stated purposes of the LLC may be found in several

places. First, the Youth Ranch Articles of Incorporation provide: “to ...establish other organizations... to assist in the advancement of the charitable purposes of the Idaho Youth Ranch.” (Supplemental Exhibit, page 1). The LLC was one such organization.

The agreement with Nagel Beverage Company also obligated the property to be held for charitable purposes: “for so long as buyer owns and holds the property for charitable purposes, the property shall be operated under the name Idaho Youth Ranch Nagel Center or similar name approved by Nagel” (TR 26, LN 19 to TR 27, LN 16 and Exhibit 8, Addendum paragraph D).

The LLC’s Operating Agreement contains the standard “any lawful business” language. *See Exhibit 4*. While this form language permits but does not limit the organization's purpose to charitable activities, such limitation is found in federal law. 26 USC § 501(c)(3). Additionally, all of the activities of the LLC are reported on Federal Form 990 (Exhibit 14) where the purposes of the overall Youth Ranch organization (including the LLC) are stated to be charitable and more specifically “to provide troubled children and their families a bridge to a valued, responsible and productive future.” (See Exhibit 14 at page 1 and schedule O). Testimony also established the LLC’s purpose was to support the charitable activities of the Youth Ranch. (TR 21, LN 22-25).

(2) Charitable function. The actual function of an organization is another factor to consider in determining whether the organization is a charitable one. In the present case, the charitable function of the LLC was to support the charitable activities of the Youth Ranch by providing the Youth Ranch with a building space to conduct those charitable activities. This arrangement was similar to the *Boise Central* case. In *Boise Central*, the organization supported its members by providing office space. In the present case, the LLC supported the youth ranch by providing executive office space as well as a distribution center for charitable contributions and a location for providing community services.

There are many other examples of charitable organizations whose only function is to support other charities. This is recognized under federal law by a special classification of charitable organizations called supporting organizations. 26 USC § 509 (a)(3). The Idaho Youth Ranch Foundation, Inc. referred to in the fact section of this brief was a separate charitable organization recognized as a Section 509(a)(3) support organization; its charitable function was to support the Youth Ranch. The Foundation also managed scholarships for children that graduated from the Ranch program and performed other support functions. (TR 18, LN 3-25; TR 21, LN 13-15). (Note: The LLC in this case did not need to seek recognition as a 509 (a) (3) support organization because as a “disregarded entity” it fell under the 501(c)(3) exemption already provided to the Youth Ranch). Like the Foundation, the LLC’s charitable function was also to support the Youth Ranch.

(3) Support by Donations. The LLC initially received a \$1.136 million donation from Nagel Beverage Company in the part sale/part gift transaction when the property was acquired. (See TR 51, LN 6-11). Additionally, the Youth Ranch received a \$350,000 donation from the ALSAM Foundation for improving the property. The ALSAM Donation was also matched by public charitable donations. (See Exhibits 11 and 12, TR 27, LN 24 to TR 29, LN 1).

Additionally, the property taxes here in question were paid for by donations from the public to the Youth Ranch. If the property was exempt from tax, then those donations could have been “spent on the treatment of children, providing counseling services and provide them residential services.” (TR 33, LN 1-9).

(4) Whether Recipients of Services are Required to Pay for the Assistance They Receive. This factor is relevant because charitable organizations often provide services either free or below the market value of those services. Additionally the court noted in *Sunny Ridge* that an

institution may still qualify for a tax exemption even if fees are charged to cover operating expenses. 106 Idaho at 101.

Because part of the building's equity was donated by the Nagel Beverage Company, the building itself was believed to have provided the Youth Ranch with below market rent and without a profit interest by the LLC. (TR 23, LN 21 to TR 24, LN 20 and TR 25, LN 12 to TR 26, LN 18). The LLC also ultimately deeded the property back to the Youth Ranch.

The Youth Ranch in turn provided free and low-cost services to benefit the public. The Federal Poverty Guidelines were used to determine what amount was paid by recipient families. The amount charged to recipient families was less than the cost of those services. (TR 16, LN 25 to TR 17, LN 12).

(5) General Public Benefit. As noted in *Sunny Ridge*, the concept of a general public benefit derives from the idea that a tax exemption is justified in part by a "offsetting benefit to the community." *Sunny Ridge* at 102. In the present case, the LLC's activities supported the charitable purposes of the Youth Ranch which benefited Idaho children and their families. These included therapy and counseling for children and their families, drug and alcohol rehabilitation, adoptions, recycling of items which would otherwise be sent to landfills, and other benefits described in the fact section of this brief.

Additionally, the LLC allowed the police department to train police dogs on the property after hours. (TR 51, LN 12 to TR 52, LN 3).

In *Sunny Ridge*, the Supreme Court noted that a general public benefit exists if the organization performs a function which might otherwise be an obligation of the government. Many of the charitable activities of the Youth Ranch fulfilled needs the government might

otherwise have performed. Some of these services – especially drug and alcohol treatment programs – the government contracted with the Youth Ranch to provide. (TR 16, LN 10 – 24).

(6) Lack of Profit. Testimony established there was no profit motive in the activities of the LLC. If, hypothetically, there had been a “profit,” such profit would be eliminated under Generally Accepted Accounting Principles (GAAP) on the consolidated financial statements and tax returns of the Youth Ranch. (TR 29, LN 4-8 &17-23).

(7) Where Assets Would Go. Where the assets of an organization go upon its dissolution is another factor which can indicate the organization’s charitable nature. In this case, the LLC was governed by federal requirements under 26 USC §501(c)(3) as well as Idaho Code section 30-6-708 which provides that, after payment of obligations to creditors, the assets of a LLC upon dissolution are returned to the members. Here the only member was a charitable organization – the Idaho Youth Ranch. Therefore, as its sole owner, any property owned by the LLC would have gone to the Youth Ranch upon dissolution.

Moreover, the property was in fact deeded to the Youth Ranch by the LLC on August 25, 2011. The LLC was then merged into the Youth Ranch, with the Youth Ranch its only surviving entity. (TR 30, LN 22 to TR 31, LN 24; Exhibits 15 and 16).

(8) Charity Based on Need. Whether a charity is needed is another factor listed by *Sunny Ridge*. Many of the services performed by the Youth Ranch were described in the fact section of this brief as well as the testimony of Nancy Proctor, Youth Ranch’s Vice President, Treasurer and Chief Financial Officer. (TR 11 – 17). Some of those services were provided by contract for the government. (TR 16, LN 10-24). Moreover, the fact that the Youth Ranch has been in existence as a charitable organization since 1954, suggests that these services are needed. See TR 17, LN 15-23 and Exhibit 1 (IRS 501 (c) (3) letter).

The Idaho Youth Ranch needed a building to provide those services. The building also provided the Youth Ranch with a facility for central distribution, executive offices and a place for southern Idaho community services. (TR 19, LN 6-10).

This eighth factor (that the charity is based on need) appears to have been critical to the District Court below. The District Court concluded that a charity must be “*directly* responsive to a (charitable) need.” (emphasis original) (District Court Memorandum Decision and Order, page 10). This interpretation imposed by the District Court was not one contained in the *Sunny Ridge* opinion. Moreover, if such a rule were adopted it would have far-reaching negative consequences – effectively disallowing a charitable exemption for all 509(a)(3) support organizations! By definition these charitable organizations only indirectly service the public.

3. Application of *Sunny Ridge* to Limited Liability Companies

Application of the above eight factors leads to the conclusion that the LLC qualifies as a “charitable limited liability company.” The *Sunny Ridge* opinion also noted that these factors were not exclusive:

Determination of an institution’s charitable status is necessarily an individual matter, to be decided on a case-by-case basis. There may be factors listed above which have no application to particular cases, and factors not listed which would need to be considered.

106 Idaho at 100.

The *Sunny Ridge* case was decided prior to the amendment to Idaho Code §63-602C adding limited liability companies to the statute. Liability companies are unique as charitable organizations because under federal tax law as well as Generally Accepted Accounting Principles (GAAP) they are treated as “disregarded entities.” (TR 20, LN 22 to TR 21, LN 12 and TR 29, LN 2-23). Therefore, their charitable status *for income tax* purposes is determined by the charitable status of the member organization which owns them. Likewise their activities are

treated as indistinct from and subject to the same charitable activity limitations as their member organization.

Because of the unique nature of limited liability companies, it would be appropriate for this Court to also consider *for property tax* purposes the charitable character of the member organization which owns a limited liability company in determining whether such company qualifies as a “charitable limited liability company.”

The consideration of this additional factor is a logical extension of the *Sunny Ridge* case as applied to limited liability companies. It also provides greater consistency with federal law concerning charitable organizations. However, should the court decide only to consider the eighth factors originally adopted by *Sunny Ridge*, counsel respectfully urges the court to find the LLC in this case qualifies as a “charitable limited liability company.”

CONCLUSION

The charitable purpose of the LLC was to support the charitable activities of the Idaho Youth Ranch. The LLC fulfilled this purpose by providing a building where those charitable activities could take place, and thereby improving the lives of Idaho children and their families. From the foregoing, it is apparent that ownership and use of the property was charitable and should qualify for exemption from property tax pursuant Idaho Code §63-602C.

DATED THIS 4th day of December, 2013.



John B. Hinton,
Law Office of John B. Hinton
Attorney for the Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of December, 2013, I caused to be served a true copies of the foregoing APPELLANT'S BRIEF the method indicated below, and addressed to those parties marked served below:

GREG BOWER
Ada County Prosecutor
GENE F. PETTY
Deputy Prosecuting Attorney
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(208) 287-7700

U.S. Mail,
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