The University of North Carolina at Chapel Hill

INSTITUTE of GOVERNMENT

# PROPERTY TAX

BULLETIN

Number 121 July 1999 William A. Campbell, Editor

## THE EXEMPTION OF PROPERTY USED FOR EDUCATIONAL PURPOSES

■ William A. Campbell

This bulletin reviews the exemption granted by G.S. 105-278.4 to property used for educational purposes. It is the third in a series of bulletins on exemptions and exclusions.

### Public educational institutions

The real and personal property of pubic educational institutions—elementary, middle, and high schools, community colleges, and the constituent institutions of the University of North Carolina—is exempt from taxation pursuant to G.S. 105-278.1, which exempts the property of units of government. It matters not how this property is used, that is, whether or not it is used for an educational purpose.[1] For the property to qualify for the exemption, it is only necessary that it be owned by a public agency. Thus, G.S. 105-278.4, the statute discussed in this bulletin, applies only to private educational institutions.

### The statute, G.S. 105-278.4

#### Constitutional basis

Article V, section 2(3), of the North Carolina Constitution authorizes, but does not require, the General Assembly to exempt property "held for" educational purposes. The General Assembly has not exempted all property owned by educational institutions or used by them, but rather has imposed both ownership and use requirements as a condition to obtaining the exemption.

#### Qualified buildings

A building, the land the building occupies, and any additional land reasonably necessary for the convenient use of the building qualifies for exemption if the following four requirements are met:

1. It must be owned by an educational institution;

[1] *See* In re University of North Carolina, 300 N.C. 563, 268 S.E.2d 472 (1980).

2. The owner must be a nonprofit organization, and no officer or employee must receive any profit from the institution's operations except reasonable compensation;
3. It must be be used in the performance of activities that are naturally and properly incident to the operation of an educational institution; and
4. It must be wholly and exclusively used for educational purposes by the owner or occupied gratuitously by another nonprofit educational institution and wholly and exclusively used by the occupant for nonprofit educational purposes.[2]

Two categories of educational property cannot meet these requirements and are therefore not exempt. The first category is buildings owned by for-profit educational institutions, including such proprietary schools as business colleges and schools of cosmetology. The second category is buildings leased and used by a nonprofit educational institution but owned by a private individual or firm.

## Qualified land and improvements other than buildings

Unimproved land, and improvements other than buildings, the land actually occupied by the improvements and additional land reasonably necessary for the convenient use of such improvements are also exempt if the following requirements are met:

1. The land or improvement is owned by an educational institution that owns a building entitled to exemption;
2. The land or improvement is of a kind commonly employed in the performance of activities naturally and properly incident to the operation of an educational institution; and
3. The property is wholly and exclusively used for educational purposes by the owner, or it is occupied gratuitously by another nonprofit educational institution and wholly and exclusively used by the occupant for nonprofit educational purposes.[3]

It is noteworthy that this exemption for unimproved land and improvements other than buildings is not freestanding; it is tied to the exemption of a building, but the land or improvement does not have to be adjacent to the exempt building. For example, a private school with one or more exempt buildings would be able to exempt athletic fields that might be several miles from the buildings.

## Exceptions to the exclusive use requirement

Two exceptions are made to the exclusive use requirement. First, if a part of a building or parcel of land that would otherwise qualify for exemption is disqualified, the entire building or parcel is not disqualified. Rather, the value of the remaining qualified part continues to be exempt.[4] Second, incidental use of a building or facility by members of the general public will not cause the exemption to be lost, so long as the amount of business or patronage is not material.[5] What is "incidental" and "material" is a matter of judgment to be exercised by the assessor. For example, occasional use of a college bookstore by members of the general public is probably incidental. But monthly use of a concert hall for programs put on by groups not associated with the college to which members of the general public are offered tickets is probably material. Most use of college and university facilities by members of the public is of sports facilities, and as will be discussed below, no amount of public use will disqualify such a facility.

## Personal property

A new element is added to the exemption of personal property, that of property held by a church or religious body. Personal property owned by a church, religious body, or educational institution is exempt if it meets the following requirements:

1. The owner is a nonprofit organization and no officer or employee receives a profit from its operations, other than reasonable compensation; and
2. The property is used wholly and exclusively for educational purposes by the owner, or it is held gratuitously by a church, religious body, or nonprofit educational institution other than the owner and is wholly and exclusively used for nonprofit educational purposes.[6]

---

[2] N.C. Gen. Stat. § 105-278.4(a).

[3] *Id.* § 105-278.4(b).

[4] *Id.* § 105-278.4(c).

[5] *Id.* § 105-278.4(d).

[6] *Id.* § 105-278.4(e).

The inclusion of the property of churches and religious organizations in this statute is curious. It allows a church, as a church, that is operating a school to exempt personal property owned by the church and used in the school. There is no such direct exemption for real property owned by a church and used in a church-operated school. G.S. 105-278.3, the statute exempting certain property owned by religious organizations, exempts church-owned real property used for educational purposes only if it is occupied gratuitously by one other than the owner.[7] This indirect exemption makes it necessary for a church—as one possibility—to establish a nonprofit corporation to operate its school and then make the property available to the school.

### Educational purposes and sports facilities

To qualify for the exemption granted by this statute, all of the property must be used for an educational purpose. Such a purpose is "one that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons."[8] The statute expressly includes within the definition of "educational purpose" the operation of a golf course, tennis court, sports arena, or similar sports facility for the use of students and faculty, and such property retains its exempt status no matter how much it is patronized by the general public.[9]

## Judicial and Property Tax Commission decisions

### Partial loss of exemption

Wake Forest University entered into an easement agreement with R.J. Reynolds Industries, Inc. whereby Reynolds could use Wake Forest's football stadium parking lot to go to and from its headquarters building and its employees and visitors could use the parking lot during the week. Although the entire parking lot was subject to the easement, Reynolds used only about one-third of it for parking. Forsyth County argued that the entire parking lot was taxable because of the university's arrangement with Reynolds. The county contended that for Wake Forest to avail itself of the exception to the exclusive use requirement of G.S. 105-278.4(c) a particular part of the lot would have to be set aside for Reynolds; here the entire lot was available to it. In *In re Wake Forest University*,[10] the court of appeals declined to accept the county's argument. The court found that since Reynolds actually used only one-third of the parking lot, only one-third of the value of the lot should lose its exemption.

### Nature of an educational institution

The Atlantic Coast Conference is an unincorporated association of member universities whose mission is to promote intercollegiate athletics and negotiate television contracts for its member institutions. In *In re Atlantic Coast Conference*,[11] the court of appeals held that an office building owned by the ACC was actually owned by the member universities and was therefore owned by educational institutions. It further held that the promotion of intercollegiate athletics was an educational purpose. Therefore, it held the property qualified for exemption if the ACC could show that its employees did not receive a "pecuniary profit" from its operations.

### Rental property

Elon College owned a business building in Reidsville the rents from which were entirely used for the college's educational purposes. Rockingham County taxed the building and the college objected that it should be exempt as educational property. In *Rockingham County v. Elon College*,[12] the North Carolina Supreme Court held that the property was not exempt because it was not "held for" an educational purpose within the meaning of the constitution. To qualify for the exemption, the property itself had to be put to an educational use; it was not enough that the income was devoted to educational purposes.[13]

### Unimproved land

---

[7] *Id.* § 105-278.3(a)(2).

[8] *Id.* § 105-278.4(f).

[9] *Id.*

[10] 51 N.C. App. 516, 277 S.E.2d 91, review denied, 303 N.C. 544, 281 S.E.2d 391 (1981).

[11] 112 N.C. App. 1, 434 S.E.2d 865 (1993), affirmed, 336 N.C. 69, 441 S.E.2d 550 (1994).

[12] 218 N.C. 342, 13 S.E.2d 618 (1941).

[13] *Accord*, Guilford College v. Guilford County, 219 N.C. 347, 13 S.E.2d 622 (1941).

At issue in *In re Southeastern Baptist Theological Seminary, Inc.*,[14] were four unimproved parcels of land owned by the seminary. Parcel one was a .58 acre tract in a residential subdivision; parcel two consisted of 12.72 acres used by the seminary for recreation and as a buffer for its faculty housing; tract three was a 165 acre natural area adjacent to student housing units; and parcel four was a 19 acre tract that provides an undeveloped entry to the campus. Wake County denied an exemption for all four parcels on the ground that they were not used for educational purposes and were not reasonably necessary for the convenient use of educational buildings.

The Property Tax Commission agreed that parcel one, located in a residential subdivision, should be taxable. But it held that the other three parcels should be exempt because they acted as buffer zones to protect the serene atmosphere of the campus. The "buffer zone" concept is derived from *In re Worley*,[15] which dealt with undeveloped property owned by a church. Two members of the commission dissented from the decision to exempt parcel three. In their view, 165 acres was an unreasonably large buffer, especially in light of the fact that the seminary had tried to have most of the parcel rezoned commercial so that it could be developed.

[14] 96 P.T.C. 52 (May 5, 1998).

[15] 93 N.C. App. 191, 377 S.E.2d 270 (1989). This case and similar ones are discussed in Property Tax Bulletin No. 119 (March 1999).

This Bulletin is published by the Institute of Government to address issues of interest to local and state government employees and officials. Public officials may photocopy the Bulletin under the following conditions: (1) it is copied in its entirety; (2) it is copied solely for distribution to other public officials, employees, or staff members; and (3) copies are not sold or used for commercial purposes.

Additional copies of this Bulletin may be purchased from the Institute of Government. To place an order or to request a catalog of Institute of Government publications, please contact the Publications Sales Office, Institute of Government, CB# 3330 Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330; telephone (919) 966-4119; fax (919) 962-2707; e-mail khunt@iogmail.iogunc.edu; or visit the Institute's web site at http://ncinfo.iog.unc.edu.

The Institute of Government of The University of North Carolina at Chapel Hill has printed a total of 868 copies of this public document at a cost of $158.15 or $0.19 each. These figures include only the direct costs of reproduction. They do not include preparation, handling, or distribution costs.