PROPERTY TAX

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FIVE RECENT CASES ADDRESS EXEMPTIONS FOR RELIGIOUS AND EDUCATIONAL PROPERTY

➤Shea Riggsbee Denning

This Bulletin provides a summary and analysis of four recent court decisions addressing exemptions for religious and educational property, along with one recent opinion from the Property Tax Commission relating to the exemption of educational property.

In every case, the exemption sought by the taxpayer was denied.

In re Appeal of the Church of Yashua: Religious Property Exemption Does not Apply to Unimproved Land

The North Carolina Court of Appeals held in *In re Appeal of the Church of Yashua*[1] that property owned by a church and used for religious purposes was not exempted from ad valorem taxes pursuant to Section 105-278.3 of the North Carolina General Statutes (hereinafter G.S.) when no buildings were situated on the property.

The Church of Yashua the Christ at Wilmington ("taxpayer") owned approximately 50 acres of land in Pender County, North Carolina on which no buildings were located. The taxpayer had long-term plans to build an outdoor pavilion, tractor shed, workshop, storage buildings and homes for ministers and caretakers on the property. The taxpayer had no plans, however, to construct a formal building of worship on the property, as its religious beliefs prohibited worshiping as a group in a building. The taxpayer used the land for outdoor altar services, camping, recreational outings and observing nature, but not for regular instruction or courses of study.

The taxpayer first filed for tax year 2000 a request for exemption of the land from property taxes. The tax assessor denied the request for exemption, and the county board of equalization and review affirmed the denial. The taxpayer then appealed to the North Carolina Property Tax Commission, which, following an evidentiary hearing, affirmed the board's decision to deny the exemption. The Property Tax Commission found that the taxpayer was not entitled to exemption under G.S. 105-278.4 (exemption of property used for

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Shea Riggsbee Denning is an Institute of Government faculty member specializing in property tax assessment and collection.

1. – N.C. App. –, 584 S.E.2d 827 (2003), *rev. denied*, 357 N.C. 505, 587 S.E.2d 421 (2003).

educational purposes); § 105-278.5 (exemption of property owned by a religious educational assembly); § 105-278.6 (exemption of property used for charitable purposes); and § 105-278.3 (exemption of property used for religious purposes). With respect to G.S. 105-278.3, which provides in relevant part, "[b]uildings, the land they actually occupy and additional adjacent land reasonably necessary for the convenient use of any such building shall be exempted from taxation if wholly owned by [a church], and if . . . [w]holly and exclusively used . . . for religious purposes," the taxpayer contended that its land should be exempt from taxation because it was used as a "natural retreat for outdoor altar services that require[d] extended buffers to create such an environment."[2] The commission rejected the taxpayer's contention, finding that it "failed to show that the subject land qualifies for the exemption when there were no buildings of worship situated on the property that are used for a religious purpose."[3] The taxpayer appealed solely on the basis that it was entitled to an exemption pursuant to G.S. 105-278.3.

The taxpayer first argued that since it used the land for religious purposes, it was entitled to an exemption under G.S. 105-278.3, even if no buildings were located on the land. The court of appeals rejected that contention based on the unambiguous language of the statute, which focuses on buildings and exempts land only to the extent necessary for convenient use of a building. Citing the principle that statutes exempting specific property from taxation should be construed strictly against exemption and in favor of taxation, the court held that G.S. 105-278.3 did not provide for a tax exemption in the absence of a building used by the owner for religious purposes. The court noted, however, that the commission had erred in requiring that a *building of worship* be present for the property to qualify for the exemption. The court concluded that G.S. 105-278.3 required only that the building and land be used "for religious purposes," which is defined as a purpose pertaining to "practicing, teaching, and setting forth a religion."[4] Based on the taxpayer's admission that there were no buildings on the property, the court of appeals affirmed the commission's decision.

The taxpayer also argued that to the extent G.S. 105-278.3 required a building for the tax exemption to apply, it was unconstitutional as applied to the taxpayer, given that its religious beliefs prohibited worshipping as a group in a building. The court of appeals refused to address this issue because the taxpayer's beliefs did not preclude using buildings for religious purposes other than worship, and the taxpayer's long-term plans included constructing buildings on the property to be used for non-worship religious purposes that would render the land eligible for the religious property exemption.

2. *Id.* at __, 584 S.E.2d at 829.

3. *Id.*

4. *Id*. (quoting G.S. 105-278.3(d)(1)).

Comment

In re Appeal of the Church of Yashua makes clear that while North Carolina courts have liberally construed the religious real property exemption to encompass unimproved land that is deemed "adjacent" to an existing building and reasonably necessary for its use,[5] the court of appeals is unwilling to ignore the bricks-and-mortar requirement of G.S. 105-278.3.[6] The opinion also clarifies that buildings used for religious purposes other than worship will satisfy this requirement.

In re Appeal of the Master's Mission: Court Limits Amount of Property Deemed Necessary for a Buffer Zone to Protect and Preserve Educational Property

The court of appeals determined in *In re Appeal of the Master's Mission*[7] that 100 acres of land rather than the entire 1,347 acres owned by the taxpayer provided a sufficient buffer zone for the training grounds for

5. *See Harrison v. Guilford County*, 218 N.C. 718, 12 S.E.2d 269 (1940) (six-acre parcel four or five blocks away deemed adjacent to existing church building and reasonably necessary for its use); *In re Worley*, 93 N.C. App. 191, 377 S.E.2d 270 (1989) (five-acre parcel of vacant land adjacent to sanctuary building, education building and parking lot acquired for future expansion and buffer against surrounding industrial area held exempt); *In re Temple Beth El, Inc.*, P.T.C. (Aug. 4, 1978) (24-acre parcel located five miles from existing building deemed adjacent to current building and exempt); William A. Campbell, *The Exemption of Property Used for Religious Purposes*, Property Tax Bulletin No. 119 (March 1999).

6. The Property Tax Commission reached a similar conclusion years earlier in *In re Missions to Military, Inc.*, 84 P.T.C. 138 (July 17, 1985), in which it held that a vacant lot owned by Missions to Military and used for outdoor worship, located 700 feet from a leased building in which taxpayer conducted Bible study and spiritual counseling, was taxable because it was not necessary for the convenient use of a building owned by a qualifying taxpayer.

7. 152 N.C. App. 640, 568 S.E.2d 208 (2002).

missionaries and that improvements on the taxpayer's property were not entitled to an educational exemption since they were used for other purposes in addition to educating missionaries.

The Master's Mission ("taxpayer"), a nonprofit corporation, owned 1,347 acres in Graham County along the Tennessee border, which it used to train missionaries and prepare them for mission trips to remote areas of the world. Several residential structures were located in the center of the property and surrounded a lake. These structures housed staff members, guests and the main business office for the operation. Cabins for missionary trainees were located on a separate part of the property. School, community and church groups used a campsite on one corner of the property for recreational purposes without charge. Most of the remaining land was undeveloped.

The taxpayer applied to the Graham County Assessor for tax exempt status for all of its buildings and land for the 1997 tax year. The assessor granted an exemption for all structures used to house or train missionaries along with 100 of the 1,347 acres, but denied exemption for the remaining property. The denial of the exemption was affirmed by the county board of equalization and review and the Property Tax Commission. The commission concluded that the taxpayer was not entitled to exemption for the 1,247 acres in dispute under the religious, charitable or educational exemptions. With respect to the educational exemption set out in G.S. 105-278.4, the commission concluded that, while the taxpayer was an educational institution, it failed to show that all of its buildings and land were wholly and exclusively used for educational purposes.[8] Specifically, the commission noted that half of the buildings were used for staff and guest housing and for an office for general business. The commission found that on a typical day, as many as 50 people were present on the grounds of the taxpayer and that the missionary trainees and their instructors comprised a small minority of these individuals. The commission upheld the exemption for the training center, cabins for the missionary trainees, women's classrooms and bunkhouse, but affirmed the board's denial of the exemption

8. G.S. 105-278.4 provides in part:

(a) Buildings, the land they actually occupy, and additional land reasonably necessary for the convenient use of any such building shall be exempted from taxation if:

(1) Owned by an educational institution (including a university, college, school, seminary, academy, industrial school, public library, museum, and similar institution);

(2) The owner is not organized or operated for profit and no officer, shareholder, member, or employee of the owner or any other person is entitled to receive pecuniary profit from the owner's operations except reasonable compensation for services;

(3) Of a kind commonly employed in the performance of those activities naturally and properly incident to the operation of an educational institution such as the owner; and

(4) Wholly and exclusively used for educational purposes by the owner or occupied gratuitously by another nonprofit educational institution (as defined herein) and wholly and exclusively used by the occupant for nonprofit educational purposes.

(b) Land (exclusive of improvements); and improvements other than buildings, the land actually occupied by such improvements, and additional land reasonably necessary for the convenient use of any such improvement shall be exempted from taxation if:

(1) Owned by an educational institution that owns real property entitled to exemption under the provisions of subsection (a), above;

(2) Of a kind commonly employed in the performance of those activities naturally and properly incident to the operation of an educational institution such as the owner; and

(3) Wholly and exclusively used for educational purposes by the owner or occupied gratuitously by another nonprofit educational institution (as defined herein) and wholly and exclusively used by the occupant for nonprofit educational purposes.

* * *

(e) Personal property owned by a church, a religious body, or an educational institution (including a university, college, school, seminary, academy, industrial school, public library, museum, and similar institution) shall be exempted from taxation if:

(1) The owner is not organized or operated for profit, and no officer, shareholder, member, or employee of the owner, or any other person is entitled to receive pecuniary profit from the owner's operations except reasonable compensation for services; and

(2) Used wholly and exclusively for educational purposes by the owner or held gratuitously by a church, religious body, or nonprofit educational institution (as defined herein) other than the owner, and wholly and exclusively used for nonprofit educational purposes by the possessor.

(f) An educational purpose within the meaning of this section 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. The operation of a golf course, a tennis court, a sports arena, a similar sport property, or a similar recreational sport property for the use of students or faculty is also an educational purpose, regardless of the extent to which the property is also available to and patronized by the general public.

for the owner's home, the guest house, office building, duplex and storage building. The commission rejected the taxpayer's argument for exemption of all of the land on the basis that extended buffers were required to create the remote setting necessary for missionary training. The commission found that the taxpayer failed to show that more than the 100 exempted acres was necessary for the use of cabins or classrooms and noted that only three or four missionary families trained on the site in 1997. Furthermore, the commission held that the use of the campground by outside groups was not wholly and exclusively educational in nature as there was no showing of a course of study or other education during the camp-outs.

The taxpayer appealed to the court of appeals on the basis that the entire property was exempt pursuant to the G.S. 105-278.4 exemption for educational property. The court of appeals affirmed the commission's decision, finding that the buildings for which the exemption was denied were used for many purposes: as housing for the owner and director of the taxpayer, as lodging for guests who came to the property for any purpose, as a business office for daily business operations, and as storage for equipment used for many purposes on the property. The court found that the taxpayer's articulated purpose of "sending" missionaries to different parts of the world was not wholly and exclusively educational. The court also agreed with the commission's conclusion regarding the taxable nature of the 1,247 acres outside the 100-acre buffer zone. The court found that the campsite grounds, while used for an "arguably educational" purpose, were not *wholly and exclusively* used for such a purpose.[9]

With respect to the need for a buffer zone surrounding the training facility, the taxpayer's business manager testified that he was concerned about a water-bottling company bordering the property and that some neighboring property might be logged. The court found this insufficient to demonstrate that more than 100 acres was required to buffer the training grounds from encroaching urbanization, development or other forces that might compromise its educational purpose. The court distinguished its decisions in *In re Appeal of Southeastern Baptist Theol. Seminary, Inc.*,[10] and *In re Appeal of Worley*,[11] on the basis that in those cases exemption was warranted for buffer zones because "major highways and urban development came within a distance of only a few acres of the property used for educational or religious purposes."[12]

9. 152 N.C. App. at 648, 568 S.E.2d at 213.
10. 135 N.C. App. 247, 520 S.E.2d 302 (1999).
11. 93 N.C. App. 191, 377 S.E.2d 270 (1989).
12. 152 N.C. App. At 649, 568 S.E.2d at 214.

Comment

Master's Mission is significant for the limitations it places on the exempt status of buffer zone property, particularly in light of the generous manner in which the courts had previously afforded exemptions for such property. For instance, in *Southeastern Baptist*, the court of appeals affirmed the Property Tax Commission's conclusion that approximately 200 acres of property was exempt as educational property pursuant to G.S. 105-278.4. In that case, the taxpayer had actually contracted to sell 56 acres of the buffer zone property contingent upon the rezoning of the property. When the application to rezone the property for a highway business district was denied, the sale fell through. As in *Master's Mission*, the county in *Southeastern Baptist* disputed the taxpayer's need for the buffer zone property. The evidence that the seminary-taxpayer in *Southeastern Baptist* sought to convert a portion of the exempted property to commercial use appears to be a far stronger indication of the lack of real need for the buffer zone to preserve the educational nature of the property than any of the evidence cited in *Master's Mission*. The *Master's Mission* court ignored the potential uses that might have been made of the surrounding area had the taxpayer not retained ownership of that land.

The court in *Southeastern Baptist* also appeared to construe the whole and exclusive use requirement more liberally than the court in *Master's Mission*. For example, the *Southeastern Baptist* court determined that recreational use of the parcel of land that the seminary had sought to sell after rezoning was sufficient to qualify as whole and exclusive use, notwithstanding the county's argument that the property was not used for educational purposes, but instead was being held for sale at future profit.[13] The *Master's Mission* court, on the other hand, strictly interpreted whole and exclusive use and denied the exemption for certain structures on the property—including the business office—on the basis that the buildings were used for purposes other than training the missionaries. Were the whole and exclusive use requirement applied so strictly in all settings, this would likely pose exemption problems for all private universities with business offices where noneducational activities are conducted.

13. The court rejected the county's contention on the basis that present use of the property rather than future intended use controlled. However, an argument certainly could be made holding the property for sale at a profit *was* its present use.

The *Worley* decision cited in *Master's Mission* likewise demonstrates a less literal application of the whole and exclusive use requirement, albeit in the context of an exemption for religious property. In *Worley*, the court of appeals held that property owned by a church was exempt as it was used wholly and exclusively for a religious purpose even though hunting was permitted on the property. The court explained: "Although we decline to hold that permitting hunting on Lot 37 was an exempt religious purpose, we conclude that the other recreational activities that occurred there and the use of the property as a spiritual retreat together constituted sufficient present use wholly and exclusively for religious purposes to warrant exemption."[14] The *Worley* court concluded that the Property Tax Commission erred when it concluded otherwise. Again, the analysis in this decision contrasts fairly sharply with the *Master's Mission* view of whole and exclusive use.[15]

One distinction between *Master's Mission* and *Southeastern Baptist* and *Worley* is the use of the Master's Mission property by significant numbers of people who were not students or, in the case of *Worley*, were not part of a church-affiliated group. Other distinctions are the sheer size of the property at issue in *Master's Mission* and its remote, non-urban location, though these factors should not have impacted the court's interpretation of the legal requirements for exemption. Given the difficulty in drawing meaningful distinctions between the facts of *Master's Mission* and *Southeastern Baptist* and *Worley*, *Master's Mission* may best be understood as a recognition that those previous cases were incorrectly decided.

In Re Appeal of Maharishi Spiritual Center: Property Tax Commission's Denial of Educational Exemption Stands Where Evidence Conflicts Regarding Use of Property for Educational Purposes

The North Carolina Supreme Court held in a per curiam decision in *In Re Appeal of Maharishi Spiritual Center*[16] that land owned by the nonprofit taxpayer, on which men and women on separate campuses engaged in long-term meditation programs and studies and on which a separate nonprofit corporation operated a girls' high school, did not qualify for the educational exemption provided by G.S. 105-278.4.

The case came before the supreme court on appeal from a divided panel of the court of appeals, which had reversed the Property Tax Commission's denial of the exemption. Judge Tyson dissented from the court of appeals' decision and criticized the majority for substituting its own judgment of the facts for that of the commission rather than merely determining whether the commission's decision was supported by substantial evidence. The per curiam opinion by the supreme court reversed "for the reasons stated in dissenting opinion" without further elaboration.[17]

The Maharishi Spiritual Center ("taxpayer") owned 550 acres in Watauga County that was divided into men's and women's campuses. Men participated in a long-term "Purusha" program that included eight hours of daily meditation. Many of these men had been members of the Purusha for 20 years. Men also engaged in daily fundraising or work for two nonprofit entities associated with the taxpayer: the Maharishi Vedic Education Development Corporation, a Massachusetts corporation that worked with schools to develop and offer courses in Vedic education; and Maharishi Global Administration Through Natural Law ("MGANL"), a California corporation whose purposes included promoting and establishing educational programs in Vedic science,[18] technology and natural law. Men also attended educational presentations, read or studied Vedic literature and participated in short-term courses including group practice of meditation along with lectures from Vedic scholars and scientists. Women participated in the Mother Divine Program, which was similar to the Purusha program and was administered by MGANL. The taxpayer also offered women's courses for degree credit through the Maharishi University of Management and short-term courses for women in "meditation, diet and nutrition, and mother-daughter topics."[19]

The taxpayer's programs were open to all who applied. Students paid a fixed tuition and were asked to raise $1,000 per month in funds to cover room and boarding and costs of maintaining the campus. In turn,

14. 93 N.C. App. at 196–97, 377 S.E.2d at 273–74 (internal quotations omitted).

15. In *In re Appeal of North Carolina Forestry Found., Inc.*, 296 N.C. 330, 337, 250 S.E.2d 236, 241 (1979), the supreme court endorsed a strict interpretation of the word "exclusively," though in that case, the use of the property by a commercial enterprise was extensive.

16. 357 N.C. 152, 579 S.E.2d 249 (2003).

17. *Id.* at 152, 579 S.E.2d at 249.

18. Vedic science is "a branch of Indian knowledge with roots in Sanskrit and Eastern literature." *In re Appeal of Maharishi Spiritual Center*, 152 N.C. App. 269, 272, 569 S.E.2d 3, 5 (2002), *rev'd*, 357 N.C. 152, 579 S.E.2d 249 (2003).

19. *Id.*

they were provided with food, lodging and access to the facilities. Taxpayer did not award formal degrees or diplomas.

A fully accredited private girls' high school was located on the women's campus. It was operated by Mother Divine and MGANL, and awarded high school diplomas.

The Watauga County Board of Equalization and Review denied taxpayer's request for exemption from property taxes for the real estate and personal property associated with the men's and women's campuses. It also denied exemption for the girls' school and undeveloped property owned by the taxpayer. The taxpayer appealed to the Property Tax Commission, which ruled that it was not entitled to exemption from property taxes on educational, charitable or scientific grounds. The taxpayer appealed on the basis that the commission erred in denying the educational exemption.

The majority opinion for the court of appeals began its analysis by stating that under the "whole record" standard of review, its role was to evaluate whether the judgment of the Property Tax Commission "as between two reasonably conflicting views, is supported by substantial evidence."[20] The majority then addressed whether the taxpayer had proven that its developed property met the four requirements for exemption as educational property set forth in G.S. 105-278.4: (1) the property is owned by an educational institution; (2) the owner is not organized or operated for profit; (3) the property is of a kind commonly employed in the performance of activities incident to the operation of an educational institution; and (4) the property is wholly and exclusively used for educational purposes or occupied gratuitously by another nonprofit educational institution and used by it for nonprofit educational purposes.

With respect to the first requirement, the majority concluded that "the term educational institution easily accommodates the nature of the [taxpayer's] organization." In support of its conclusion, the majority recounted testimony from experts who testified before the commission that the taxpayer was an educational institution. The majority also cited the taxpayer's corporate purpose, as set forth in its articles of incorporation, "*to create and offer to the public, and those living in the community, education programs* in developing higher states of consciousness thorough Maharishi's Vedic Science."[21]

After noting that there was no dispute that the taxpayer was a nonprofit corporation, thus satisfying the second requirement, the majority addressed the commission's conclusion regarding requirement three. The majority determined that the commission's conclusion that the property was not of a kind commonly employed for educational activities by similar institutions was not supported by *any* evidence in the record. The majority recounted expert testimony that other universities, including Duke University, set aside places for people to meditate, and that "'appropriate space'" was necessary for the practice of meditation.[22]

Finally, with respect to the whole and exclusive use requirement, the majority concluded that the record showed "substantial evidence that the training or development of skills of individuals occurs at the Spiritual Center."[23] The majority noted that the meditation sessions involved specific instructions from teachers and cited expert testimony that information was being transmitted at all of the programs. The majority also cited the admission by Dr. Verne Bacharach, a professor of psychology who testified for the county, that transcendental meditation was an educational experience. The majority further pointed to Dr. Bacharach's acknowledgement that "he had no opinion about whether the transmission of information or knowledge about transcendental meditation techniques results in the knowledge or skills of individual persons or is educational."[24] The majority concluded that, under the whole record test, the evidence did not support the commission's conclusion that the taxpayer's property did not meet the requirements for a G.S. 105-278.4 educational exemption.[25]

Like the majority opinion, Judge Tyson's dissenting opinion, which was adopted by the North Carolina Supreme Court, began by noting that the role of the appellate court under the whole record test of review was to determine whether the decision of the commission was supported by substantial evidence. Judge Tyson's opinion recognized that testimony before the Property Tax Commission was conflicting regarding whether the practice of meditation eight hours per day by the Purusha and Mother Divine was an educational

20. *Id*. at 274, 569 S.E.2d at 6.

21. *Id.* at 275, 569 S.E.2d at 7.

22. *Id.* at 277–78, 569 S.E.2d at 8 (quoting Dr. Maya McNeilly, a psychologist and adjunct professor at Duke University).

23. *Id.* at 280, 569 S.E.2d at 10.

24. *Id.* at 282, 569 S.E.2d at 11.

25. The majority remanded the case to the Property Tax Commission for a determination of whether the undeveloped portion of the taxpayer's property was "reasonably necessary" for the use of its developed property, thus rendering it eligible for exemption. *Id*. at 282–83, 569 S.E.2d at 11–12. The majority further concluded that the private high school on property was exempt pursuant to G.S. 105-287.4. *Id.* at 283, 569 S.E.2d at 12.

activity and whether the taxpayer was an educational institution. The dissent noted that while expert psychologists testified for taxpayer that participants in meditation are learning and that taxpayer was an academic institution, Dr. Bacharach testified that taxpayer was not an educational institution. The dissent cited Dr. Bacharach's testimony that, while the teaching of meditation technique over a short period was an educational activity, the practice of meditation eight hours a day was not a learning activity. The dissent concluded that Dr. Bacharach's testimony was sufficient to support the commission's conclusion that the taxpayer's facilities were not "wholly and exclusively" used for educational purposes.[26] In support of this conclusion, the dissent cited *In re Appeal of North Carolina Forestry Found., Inc.*,[27] a case in which the North Carolina Supreme Court held that forest-land owned by a nonprofit foundation for educational purposes did not qualify for an educational exemption because a paper company occupied and used the land for commercial purposes. The dissent also cited *In re Appeal of Chapel Hill Day Care Center, Inc.*,[28] where the court of appeals held that educational activities at a day care center did not qualify the center for an educational exemption given the center's custodial purpose.

With respect to the portion of the property used for the girls' school, the dissent agreed with the commission's findings that the school property was not exempt as MGANL, the owner and operator of the school, did not qualify as an educational institution. The dissent focused on the listing of specific entities following the words "educational institution" in G.S. 105-278.4(a)(1) (requiring that property be "[o]wned by an educational institution (including a university, college, school, seminary, academy, industrial school, public library, museum, and similar institution)) and determined that those entities were "usually, if not exclusively, aimed at education."[29] Citing the purposes set forth in MGANL's articles of incorporation, (1) to promote knowledge that life is the ever-evolving expression of natural law; (2) to bring an end to all problems and suffering in the world through Maharishi Vedi science and technology; (3) to work with other organizations dedicated to the advancement of the Maharishi Sthapatya Veda to create ideal housing, (4) to establish facilities to introduce programs of natural law through education, health, economy and administration, (5) to accept, hold, invest, reinvest and administer gifts and legacies, and (6) to perform any and all lawful acts, the dissent concluded that the primary purpose of MGANL was not education. Thus, the dissent found that the girls' school did not fall within the scope of "'educational institution'" as defined by G.S. 105-278.4(a)(1).[30]

Comment

The Supreme Court's decision in *Maharishi* seems as important for the manner in which it applied the "whole record" standard of review as for its interpretation of the educational exemption requirements of G.S. 105-278.4. The decision emphasizes that the role of the court of appeals in whole record review is not to substitute its judgment regarding the facts for that of the Property Tax Commission. *Maharishi* makes clear that so long as the commission's findings are supported by substantial evidence, they will be affirmed on appeal.

In re University for Study of Human Goodness and Creative Group Work: No Educational Exemption for Restaurant Operated As a Learning Laboratory

Mindful of the stringent standard of review approved by the North Carolina Supreme Court in *Maharishi*, the court of appeals affirmed the Property Tax Commission's conclusion in *In re University for Study of Human Goodness*,[31] that a restaurant owned by a nonprofit corporation and used as a learning laboratory was not entitled to the G.S. 105-278.4 educational exemption.

The University for the Study of Human Goodness and Creative Work ("taxpayer"), a nonprofit corporation, applied to Forsyth County for a property tax exemption for 2000 for the "California Fresh Buffet," a restaurant that it intended to use as a learning environment "for people to assimilate what they are learning in theory and be able to practice that effectively when they go out."[32] Before opening the facility as a restaurant and learning laboratory, students and faculty worked without pay to renovate the former Red Lobster restaurant for use as a restaurant and learning

26. *Id.* at 286, 569 S.E.2d at 13 (Tyson, J. dissenting).

27. 296 N.C. 330, 250 S.E.2d 236 (1979).

28. 144 N.C. App. 649, 551 S.E.2d 172 (2001).

29. 152 N.C. App. at 287, 569 S.E.2d at 14 (Tyson, J. dissenting).

30. *Id*. at 288, 569 S.E.2d at 14 (Tyson, J. dissenting) (quoting G.S. 105-278.4(a)(1)).

31. 159 N.C. App. 85, 582 S.E.2d 645 (2003).

32. *Id.* at 86, 582 S.E.2d at 647 (internal quotations omitted).

laboratory.[33] Taxpayer hired contractors to complete work beyond the volunteers' capabilities, such as plumbing, heating and roofing.

The restaurant opened on February 21, 2000. The taxpayer did not pay for advertising the restaurant and held it out to the public as a learning laboratory. No one involved with the restaurant had prior experience in the restaurant business, and the taxpayer did not anticipate making a profit on the restaurant. During 2000, however, the restaurant reaped revenues of approximately $200,000 that were contributed to various charities and used to pay off debt on the building.

Forsyth County denied the taxpayer's request for exemption, and the taxpayer appealed to the Property Tax Commission. William Rodda, tax collector and assessor for Forsyth County, testified before the commission that the restaurant was located on "restaurant row" rather than on the taxpayer's campus and that the operation of the restaurant was not a use that was eligible for tax exemption. Mr. Rodda opined that "the restaurant was being operated predominantly as a business and that there was a material amount of 'business and patronage with the general public.'"[34] He testified that he did not believe the property was used wholly and exclusively for educational purposes and that any educational activity was incidental.

Dr. Carolynn Blount Berry, an expert in the field of education and accreditation, testified for Forsyth County that the restaurant was not part of an educational institution and there was no evidence of curriculum, learning outcomes or measurement of outcomes. Dr. Berry opined that working at a restaurant was not educational when students were not pursuing a restaurant-related degree. She testified that characteristics of an educational institution included a formal curriculum supporting "defined and assessable learning outcomes, recognized degrees, qualified faculty, and recognition by peer institutions."[35] Dr. Berry further stated that she did not believe renovating property was educational when the taxpayer was not teaching construction. Dr. Berry did concede that experiential education was important and widely used.

The commission concluded that the taxpayer failed to show that the property was wholly and exclusively used for an educational purpose, and that the California Fresh Buffet was not the type of property commonly employed in or naturally and properly incident to the operation of an educational institution.

The court of appeals likewise concluded that neither the "uniqueness of the property [nor] taxpayer's educational focus means that the property was of the type commonly used or incidental to the operation of an educational institution."[36] The court recounted the testimony of Mr. Rodda and Dr. Berry in support of its determination that the record evidence supported the commission's conclusion that the property was not used wholly and exclusively for an educational purpose. Citing *Maharishi*, the court accordingly held that it was bound by the commission's findings of fact and conclusions of law even though there was evidence that would have supported a contrary result.

Comment

Like *Maharishi*, *University for the Study of Human Goodness* illustrates the hurdle the whole record standard of review poses for a taxpayer that loses an appeal before the Property Tax Commission based upon conflicting evidence.

In re Appalachian Student Housing Corp.: No Educational Exemption for Student Housing Owned by Nonprofit Corporation

The Property Tax Commission in *In re Appalachian Student Housing Corporation*[37] denied exempt status for University Highlands, an apartment complex and associated personal property owned by a nonprofit corporation and used to provide off-campus housing to students at Appalachian State University and Caldwell County Community College. The taxpayer appealed the commission's decision to the North Carolina Court of Appeals, where the case has not yet been argued.

Appalachian Student Housing Corporation ("taxpayer"), a nonprofit corporation organized to provide residential housing facilities for the students and faculty of Appalachian State University ("ASU"), applied for property tax exemption for the University Highlands property for tax years 2001 and 2002. Watauga County denied the request for exemption and the taxpayer appealed on the basis that the property was exempt as educational property pursuant to G.S. 105-278.4, as property owned and used for a charitable purpose pursuant to G.S. 105-278.6, as property owned and used for educational, scientific, literary or charita-

33. *Id*., 582 S.E.2d at 646–47; *In re Appeal of University for Study of Human Goodness and Creative Group Work*, 00 P.T.C. 304 (Jan. 16, 2002).

34. 159 N.C. App. at 87, 582 S.E.2d at 647.

35. *Id.*

36 *Id.* at 90, 582 S.E.2d at 649.

37. 01 P.T.C. 394, 02 P.T.C. 641 (March 25, 2003).

ble purposes pursuant to G.S. 105-278.7, and as property owned by a unit of government pursuant to G.S. 105-287.1.

The taxpayer contended before the commission that the property was specifically designed to enhance the educational experience for students enrolled at Appalachian State University ("ASU") and that the property was exempt from taxation as ASU owned equitable title in the project. Twenty-five of the 768 students residing the complex attended Caldwell County Community College; the rest were enrolled at ASU. Students paid $400 to $500 per month, depending on the size of the apartment, to live in the complex and were permitted to pay for this housing on a semester basis. Watauga County argued that the property was subject to taxation as it was owned by a corporation rather than an educational institution.

The Property Tax Commission found that the taxpayer competed with for-profit entities that provided residential housing facilities for area college students. In addition, the commission concluded that the apartment complex was not owned by ASU and was not a part of the campus.

The commission concluded that the property was not exempt as educational property pursuant to G.S. 105-278.4 because the taxpayer failed to demonstrate that the property was wholly and exclusively used for an educational purpose. The commission specifically held that "student housing is not an activity that is naturally and properly incident to the operation of an educational institution."[38]

The commission further concluded that the property was not exempt as property used for charitable purposes pursuant to G.S. 105-278.6 or property used for educational, scientific, literary or charitable purposes pursuant to G.S. 105-278.7, as the taxpayer met neither the ownership nor use requirements for exemption under these statutes.

Comment

As previously noted, the taxpayer's appeal of the Property Tax Commission's opinion in this matter is pending in the court of appeals.

The Property Tax Commission's decision provides little analysis of the issues and fails to explain the ownership structure underlying the taxpayer's claim that ASU owned "equitable title" in the housing. The commission's statement that providing housing is not an activity naturally and properly incident to an educational institution also is curious given the nearly universal presence of student dormitories on university campuses. The court of appeals' decision should clarify these issues and provide guidance for how to determine the exempt or taxable status of similar property throughout the state.

38. 01 P.T.C. 394, 02 P.T.C. 641 at 4.

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