Opinion No. 1125 H

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JOSEPH M. AUGHAN
CLERK OF THE
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

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THE CATHOLIC UNIVERSITY OF AMERICA, Petitioner	)	
v.	)	Tax Docket No. 2301
DISTRICT OF COLUMBIA, Respondent	)	

MEMORANDUM ORDER

This case comes back before the Court on respondent's motion in which it seeks to have the Court vacate its decision in favor of the petitioner and enter a decision in favor of the respondent.

The motion is addressed to the Opinion and Order filed in this case on April 8, 1976, in which the Court held that the real property owned by the petitioner, and identified as the Campus School (Lot 804, Square 3891) and Brady Hall (Parcel 135/70), are exempt from real property taxes for Fiscal Years 1975 and 1976. 104 Wash. Law. Rept. 649. Respondent challenges that decision on three grounds. First, it contends that the Court erred when it ruled that there is no requirement for a concurrence of ownership and use under D. C. Code 1973, §47-801a(j). Second, it argues that, assuming there is no requirement for a concurrence in ownership and use, the petitioner would only be entitled to an exemption on that portion of Campus School which was actually used for storage purposes. This Court had found that only one-sixth of the floor space of Campus School was

used for storage, the remainder of the building was at that time empty. Third, the respondent contends that the petitioner is not entitled to an exemption for that portion of the property leased to the American Language Academy. The Court will consider each point in order.

I

The issue of the necessity for a concurrence of ownership and use of the property under Section 801a(j) was fully briefed and argued by the parties. After considering those arguments, the Court ruled as a matter of law that there is no requirement that the property be owned and used by the same entity. Respondent has cited no authority to support its position that there is such a requirement. Indeed, respondent appears to recognize that the weight of authority in this jurisdiction supports the Court's decision. (See respondent's brief in support of its motion, par. 3.) In Catholic Home for Aged Ladies v. District of Columbia, 82 U.S. App. D.C. 195, 161 F.2d 901 (1947), the Federal Appellate Court held that language contained in Section 801a(h), which is similar to that contained in Section 801a(j), does not require a concurrence of ownership and use. More recently, our highest court held that there is no such requirement under Section 47-801a(n) [Exemptions to Religious Corporations or Societies]. District of Columbia v. Maryland Synod of Lutheran in America, 307 A.2d 735 (D.C. App. 1973). Furthermore, as noted in the challenged Opinion and Order, when Congress required a concurrence of

ownership and use, it specifically used language setting forth that requirement as in the case of Section 47-801a(m) where it is provided that a church is entitled to an exemption where the property is used by "its" congregation. 104 Wash. Law Rept. at 653. See Bethal Pentecostal Tabernacle, Inc. v. District of Columbia, 104 A.2d 143 (D.C. Mun. App. 1954).

Since the respondent has cited no authority in support of its contention, this Court adheres to its prior decision and holds than an exemption under Section 801a(j) does not require a concurrence of ownership and use.

II

Next, the respondent argues that, granting the decision that there is no requirement for a concurrence of ownership and use, the petitioners must loose five-sixths of its exemption in the Campus School property because, during the pertinent periods, only one-sixth of the building was actually used for storage.

The crux is not the incidental use or nonuse of the property but what is its primary use. It is the Court's understanding that the Campus School is located on the campus of petitioner. The Court has found that the Campus School is necessary for carrying on the activities and purposes of the petitioner; specifically, those activities and purposes related to the petitioners educational pursuits. There is no argument that petitioner has abandoned the Campus School or that it intends to dispose of that property. At all pertinent times it used

a portion of the building for storage. The Court can find no authority, nor has the respondent cited any, which would support the proposition that the nonuse of a part or even all of a building located on a school campus over a relatively short period of time would result in a loss of an exemption.

Each case must be judged on its own facts and the Court's ruling is necessarily limited to the facts of this case. A school the size of Catholic University must have some flexibility in its operation and its exempt status should not be disturbed merely because it elects, for a given period, not to use a given classroom, or portion of a dormatory, or other building. Certainly, in the case of a decrease of enrollment for a given year, a school should have the option of, for example, using two floors of a three floor dormatory or classroom building as a means of saving expenses without having its exempt status or a portion thereof called into question. See, Arnold College for Hygiene and Physical Education v. Town of Milford, 128 A.2d 537 (Conn. Sup. Ct. 1957).

Additionally, it should be noted that here the property had been used by the school and there is no reason to believe that its present nonuse is anything but temporary. This is not the case of an attempt to obtain an exemption for prospective use as was true in Howard University v. District of Columbia, 81 U.S. App. D.C. 40, 155 F.2d 10(1945), cert. den. 329 U.S. 739 (1946).

All of the above factors lead this Court to conclude that, under the facts of this case, the Campus School is totally exempt notwithstanding the fact that only one-sixth of the building was actually used during the pertinent period for storage. Accordingly, the respondent's argument in this regard is not well taken.

III

The last issue raised by the respondent involves a more serious question and one which was not argued previously.

A portion of Brady Hall was leased to the American Language Academy (ALA); an institution which petitioner admits is operated for profit. Section 47-801a(j) refers to "buildings belonging to and operated by schools . . . which are not organized or operated for private gain". The question arises whether "profit" can be equated with "private gain". In the view of this Court, once the petitioner conceded that ALA is operated for profit, it is petitioner's burden to distinguish "profit" from "private gain" if indeed there is a distinction. Petitioner has not done so therefore this Court is free to assume that profit and private gain are synonymous and that the ALA is operated for private gain as that term is used in Section 47-801a(j). Having made that finding, will the fact that the ALA is operated for private gain affect the exempt status of that portion of the property actually occupied by ALA? This Court believes that that question must be answered in the affirmative.

"Exemptions from taxation must be strictly construed against those claiming exemption". Conference of Major Religious Superiors of Women, Inc. v. District of Columbia, 121 U.S. App. D.C. 171, 173, 348 F.2d 783, 785 (1965). This Court has previously concluded that there is no requirement for a concurrence of ownership and use. That ruling necessarily implies that the property be owned and used by an entity or entities described in the statute, that is, by a school not operated for private gain. Support for that argument is found in Catholic Home for Aged Ladies v. District of Columbia, supra, where the court stated (U.S. App. D.C. at 196, F.2d at 902): "A more logical construction is that there must be use by a charitable organization and ownership by a charitable organization". [Emphasis supplied.] Here, that portion of Brady Hall used by ALA is not being used by a charitable organization but is being used by one operated for private gain, accordingly, that portion of the property is not exempt under Section 47-801a(j). This case is distinguishable from District of Columbia v. Vestry of St. James Parish, 80 U.S. App. D.C. 314, 153 F.2d 621 (1946), which was cited by petitioner. There, the court noted that the questioned activity, the Rector leasing a portion of the Rectory to other members of the church, was directly in line with the natural and normal functions of the church. Here, although the ALA is a school, it is a school operated for private gain and thus does not come within the terms of the exemption.

In such cases it is the general rule that the court may pro rate the exemption. See, District of Columbia v. Young Mens Christian Association, 95 U.S. App. D.C. 179, 221 F. 2d 66 (1955) [Authority to pro rate exemption granted by statute]; District of Columbia v. Vestry of St. James Parish, supra.

Petitioners are entitled to an exemption of ninety percent on Brady Hall for Fiscal Year 1975, and an exemption of ninety-nine percent on Brady Hall for Fiscal Year 1976.

ORDER

It is hereby

ORDERED that petitioners are entitled to a full exemption for Campus School for Fiscal Years 1975 and 1976, and it is further

ORDERED that petitioners are entitled to exemption for Brady Hall at the rate of ninety percent for Fiscal Year 1975 and ninety-nine percent for Fiscal Year 1976.

Dated: July 19, 1976

JOHN GARRETT PENN
Judge

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