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TAX DIVISION
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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

AMERICAN COUNCIL ON EDUCATION, :
Petitioner, :
v. : Tax Docket No. 3494-84
DISTRICT OF COLUMBIA, :
Respondent. :

O R D E R

This matter came before the Court for hearing on cross-motions for summary judgment. Petitioner, the owner of One Dupont Circle (Lot 816 in Square 114), seeks an exemption of that property from real property taxation for Tax Years 1984 and thereafter pursuant to D.C. Code 547-1002(17) (exempting administrative headquarters); 547-1002(8) (exempting public charities); 547-1002(10) (exempting schools, colleges, and universities); 547-1002(18) (exempting grounds), and 547-1002(7) (exempting library buildings). The District contends that the property is not entitled to an exemption under these or any provisions. This Court has jurisdiction over this matter pursuant to D.C. Code §11-1201 and 547-1009.

Upon consideration of the arguments of counsel at the hearing and the record herein, the Court makes the following:

FINDINGS OF FACT

1. Petitioner, American Council on Education (hereinafter "ACE") is a nonprofit corporation organized under the laws of the District of Columbia, with its principal office located at One Dupont Circle, N.W. The real property at this address is ACE's national headquarters and is operated as the National Center for Higher Education.

2. Petitioner seeks exemption of the property from real property taxation for Tax Year 1984 and beyond. The taxes in controversy are those assessed for the periods July 1, 1983,

through June 30, 1984, (Tax Year 1984); July 1, 1984, through June 30, 1985, (Tax Year 1985); and July 1, 1985, through June 30, 1986, (Tax Year 1986). The tax amount in dispute is \$272,107.50 for Tax Year 1984; \$389,435.20 for Tax Year 1985; and \$413,044.10 for Tax Year 1986.

3. ACE paid the real property taxes of \$272,107.50 and \$389,435.20 assessed on the property for Tax Years 1984 and 1985. ACE paid \$206,522.05 as the first half of real property tax assessed on the property for Tax Year 1986.

4. ACE timely filed for and thereafter was denied an exemption from D.C. real property tax for Tax Year 1984 and all years thereafter.

5. For the involved periods, ACE rented approximately 70% of the square footage of the property to 22 of its member organizations while leasing five percent of this space to commercial users and retaining the remaining space (approximately 25 percent) for use as its headquarters.

6. ACE was founded in 1918. It is composed of institutions of higher education, both national and regional. It has approximately 1,459 member institutions and organizations. Approximately 1,235 of these are non-profit institutions of higher education. Most of the remaining members are educational associations, the activities of which are coordinated by ACE. Approximately 75 of ACE's members are located in the District of Columbia.

7. ACE is organized solely for nonprofit educational and charitable purposes and is exempt from federal income tax under I.R.C. §501(c)(3). ACE has also been granted exemptions from personal property tax, income and franchise tax, and sales and use tax in the District of Columbia.

8. ACE's primary purpose is stated in its Constitution as follows:

The particular deeds and purpose of the corporation are educational and are to advance education and educational methods through comprehensive, voluntary and cooperative action on the part of American educational associations, organizations and institutions, and in fulfillment of this purpose to conduct, assist, and encourage scholarly investigations in the field of education, devise techniques, collect and disseminate information, and in other ways to serve education in such undertakings as may be required and approved from year to year and from generation to generation for the common welfare.

9. The Council's primary function is to coordinate and unify the educational work and programs of its member institutions and organization. ACE's efforts include (a) coordinating and facilitating the exchange of information and ideas relating to new developments in higher education; (b) developing programs pertaining to academic affairs, institutional management, professional development, curriculum, affirmative action, the handicapped, minorities and women; and (c) facilitating international research, training, teaching, and scholarly exchange.

10. The Council conducts a number of seminars and training programs in the District of Columbia and throughout the country including Presidential Leadership Colloquia, professional development programs for college presidents, and Colloquia for Academic Administrators.

11. ACE maintains a higher education and information center library at its One Dupont Circle location. The library is open to the general public without charge.

12. ACE administers the General Educational Development (GED) Testing Service. The GED tests are available to all members of the general public.

13. All of the aforementioned programs and many other activities are conducted by ACE in furtherance of its purpose of administration, coordination and unification of its members' programs.

14. ACE asserts that its office building is entitled to exemption from District of Columbia real property taxation under D.C. Code SS47-1002(7) (1981) (library building); 7-1002(10) (buildings belonging to and operated by schools, colleges, or universities); 47-1002(8) (buildings used for purposes of public charity principally in the District of Columbia; 47-1002(17) (buildings belonging to organizations charged with the administration of institutions entitled to exemption and used as administrative headquarters thereof); and 47-1002(18) (grounds belonging to institutions entitled to exemption and required and actually used by them for carrying on their exempt purposes).

15. The educational organizations that currently jointly occupy the building with ACE are all nonprofit members of ACE that are responsible for various types of administration, coordination, and unification of many segments of the higher education community.

16. ACE and the other nonprofit tenants share certain administrative, overhead, and support costs, including: copying, addressing, mailing, publishing and data processing.

17. The ACE members who occupy the property pay ACE a reduced rent which ACE argues is because of the interrelation among the organizations and is a cost sharing arrangement necessary for the member organizations' economic survival.

18. The National Center was formed to (a) serve as the headquarters for the major national education associations; (b) provide meeting and conference facilities for the member organizations; (c) provide office and research facilities for college and university representatives when in Washington.

19. Virtually all of the Council's program and administrative staff is located in the District of Columbia. All business, banking, and purchasing activities associated with

the Council's \$30 million annual operations budget are based in the District. In addition, the Council's weekly newsletter, disseminated to more than 23,000 educators, is published in the District.

CONCLUSIONS OF LAW

i. Administrative Headquarters Exemption - §47-1002(17)

ACE argues that the portion of its property that it occupies is entitled to real property tax exemption for Tax Years 1984-86 and thereafter pursuant to D.C. Code §47-1002(17) (1981 ed.). That section exempts from real property taxation:

Buildings belonging to organizations which are charged with the administration, coordination, or unification of activities, locally or otherwise, of institutions or organizations entitled to exemption under the provisions of §§47-1002, 47-1005, and 47-1007 to 47-1010, and used as administrative headquarters thereof.

The building in question belongs to ACE, a nonprofit District of Columbia corporation. The offices of ACE's officers are located at the property, and virtually all of the Council's programs and activities are administered there. The property is ACE's administrative headquarters and contains its principal office. The organization fulfills the statutory requirement that it be "charged with the administration, coordination, or unification of activities, locally or otherwise," of its members.

In Conference of Major Religious Superiors of Women v. District of Columbia, 121 U.S. App. D.C. 171, 340 F.2d 703 (1965), the Court held that the Conference, which consisted of approximately 300 Roman Catholic Mother Superiors, was exempt from real property tax under the predecessor to D.C. Code §47-1002(17). Petitioner asserts in the instant case that, like the Conference in Religious Superiors, ACE provides advice on how its members can best be operated to

fulfill their educational and charitable purposes. Also like the Conference, ACE disseminates information and undertakes programs of interest to the higher education community it serves. In addition, ACE maintains that, like the Conference, it actively instructs educators for various roles in the higher education community through a variety of higher education programs.

Respondent argues that §47-1002(17) is inapplicable because ACE does not administer the activities of organizations entitled to property tax exemption under the D.C. Code. The Government contends that the provision exempts property owned by a coordinating organization administering the activities of institutions owning real property in the District that is used for exempt purposes. Respondent cites to the legislative history of the statutes in question in an effort to extract the Congressional intent in enacting them. The Government argues that Congress did "not intend that institutions which have no connections with local problems or local activities, in some form or other, should be exempt . . ." H.R. Rep. No. 2635, 77th Cong., 2d Sess. 6 (1942).

In contradiction, petitioner argues that this statute does not require that the institutions or organizations whose activities ACE coordinates and administers actually own tax exempt real property within the District. Rather, petitioner states that §47-1002(17) requires only that those institutions or organizations, whose activities may be conducted "locally or otherwise," be entitled to exemption.

Upon consideration of the parties' contentions concerning the purpose and breadth of this statutory provision, the Court is persuaded that the language of the statute does necessarily encompass those institutions or organizations

which may not actually own real estate in the District of Columbia. Respondent's contrary interpretation of the language would have the Court ignore the "entitled to exemption" language and substitute the word "exempt." Moreover, as petitioner asserts, the Court finds that respondent's translation renders the "locally or otherwise" language useless, since the activities of institutions or organizations owning real property in the District are necessarily local. Under the plain meaning of the statute, it is only necessary that the institutions or organizations whose activities are coordinated would be entitled to real property tax exemption under any one of the provisions of the exemption statutes, if they were to own real property within the District. Second,

Conference of Major Religious Superiors of Women, Inc. v. District of Columbia, 121 U.S. App. D.C. 171, 340 F.2d 783, 784-786 (1965). (The 300 religious communities administered by petitioner were located "throughout the country," and there was no evidence that they actually owned exempt property in the District; nevertheless, these communities met the statutory requirement since they "would be individually entitled to exemption under the D.C. Code . . ."); Christian College Consortium, Inc. v. District of Columbia, Tax Docket 3353-84 (D.C. Superior Court, Dec. 21, 1984) (None of the 71 member institutions whose activities petitioner administered was located within the District or owned real property there. Each, however, would be entitled to exemption as a school, college, or university).

The work and programs of ACE undeniably serve and encompass the District and its residents. In addition, virtually all of ACE's programs and activities are administered and coordinated within the District. It is clear that the ACE

headquarters located in One Dupont Circle qualifies for real property tax exemption under §47-1002(17). Although ACE's activities are obviously national in scope, that alone does not disqualify it from exemption. See Conference of Religious Superiors of Women, Inc. v. District of Columbia, *supra*; Christian College Consortium, Inc. v. District of Columbia, *supra*; see also National Catholic Educational Association v. District of Columbia, 96 D.W.L.R. 853 (D.C. Tax Ct. May 22, 1968)). ACE has a direct and substantial connection to the District of Columbia and is entitled to a real property tax exemption for its administrative headquarters.

II. The ACE Member-Occupants

Petitioner argues that although a portion of the ACE property is occupied by 22 ACE members, the entire property should be tax exempt (with the exception of the 5 percent leased to commercial tenants that is not the subject of this litigation). Petitioner claims that although the member occupants do pay reduced rent to ACE, their goals and functions are so meshed with the charitable and educational purposes of ACE itself that the tax exempt status of the property must not change. Petitioner argues that ACE depends on the occupancy and close proximity of its member organizations. Without them, ACE's goals would be severely hindered.

In addition, ACE argues that its receipt of rent from its member occupants does not defeat the exemption for the space they occupy. Because the rent is set at a lower than market value, it should be construed as a cost-sharing system made in furtherance of ACE's purposes and not as commercial rent. Petitioner cites several cases in support of its position: National Catholic Welfare Conference v. District of Columbia, 76 D.W.L.R. 441 (May 7, 1940); District of Columbia

v. Vestry of St. James Parish, 80 U.S. App. D.C. 314, 153 F.2d 621 (1946); St. John's Hall, Inc. v. District of Columbia, 92 D.W.L.R. 340, 342 (D.C. Super. Ct., Feb. 28, 1964).

Respondent asserts that ACE's claim to exemption of that part of its property rented to other member organizations is invalid. The District contends that, unlike Catholic Home for Aged Ladies, Inc. v. District of Columbia, 161 F.2d 901 (D.C. Cir. 1947) (court found that a charitable corporation renting a building to another closely related and integral charitable organization remained tax exempt), ACE's connection with the other member occupants is much more attenuated and much less one of dependency.

The Court is troubled by petitioner's claim of tax exempt status for the area occupied by the 22 ACE member tenants. Although each tenant currently enjoys a tax exempt status, the Court finds that merely occupying the building and helping to further the goals of ACE does not in and of itself constitute a sufficient connection or interdependent relationship to justify granting a real estate tax exemption for the entire property. The facts on the actual functions of the 22 members are not completely clear. While the Court believes that the current residents do participate in many of ACE's activities, the Court is not satisfied, based on the facts presented, that each tenant is "reasonably required by petitioner in carrying out its purposes and work" as stated by the Court in National Catholic Educational Association v. District of Columbia, 96 D.W.L.R. 853 (D.C. Tax Ct. May 22, 1960). Whether such a vast exemption was contemplated by Congress in the legislative history of the §47-1002 exemptions also must be viewed in light of a closer examination of each member's activities. Merely reducing the rent and renaming it "cost-sharing" does

not circumvent the fact that ACE could, in fact, function without one or more of its member tenants occupying space nearby. Moreover, the Court is also not persuaded by the record herein that any explicit requirements exist for occupancy in ACE's building other than simply being a member organization. Therefore, it becomes a factual question as to whether current residents are integral enough parts of ACE's functions to qualify for tax-exempt status.

The receipt of income from a portion of tax exempt property may defeat the exemption for that portion of the property if the rent or income is received for an activity other than that for which the exemption is granted. D.C. Code §47-1005 states:

If any building or any portion thereof or grounds, belonging to and actually used by any institution or organization entitled to exemption under the provisions of §§47-1002 and 47-1007 to 47-1010 are used to secure a rent or income for any activity other than that for which exemption is granted, such building, or portion thereof, or grounds, shall be assessed and taxed.

See also District of Columbia v. Maryland Synod of the Lutheran Church, 307 A.2d 735, 737 (D.C. 1973) (holding that in determining whether a property is tax exempt, the crux is the use of the property, and not the fact that the income may be derived from the property.) The Court finds that the specific functions and operations of each of the member tenants presents a factual question (notwithstanding petitioner's and respondent's claim of no material facts in dispute) requiring a full factual disclosure and application of §47-1005 to those facts. Accordingly, the Court finds that cross-motions for summary judgment as to the spaces leased to the 22 member organizations by ACE must be denied at this time.

III. Public Charity Exemption - §47-1002(8)

Petitioner claims that in addition to being exempt pursuant to §47-1002(17), the property is exempt from real

property tax pursuant to §47-1002(8). Indeed, there is no requirement that exempt uses fall within one, and only one, statutory provision. First Superet Branch Church of Washington, D.C., Inc. v. District of Columbia, 112 D.W.L.R. 369, 374 (D.C. Super. Ct., Feb. 24, 1984). "Charity" under §47-1002(8) is defined as follows:

Charitable in its legal sense may be defined as comprising four principle divisions: (1) relief of poverty; (2) advancement of education; (3) advancement of religion; and (4) other purposes beneficial to the community.

World Plan Executive Council -- United States v. District of Columbia, Tax Docket Nos. 3108-82 and 3199-83, Order at 8 (D.C. Super. Ct., March 21, 1984).

It is clear that ACE's purpose, as stated in its Constitution, is the advancement of education and educational methods for the common welfare. Therefore, the section of the property occupied by ACE itself falls squarely within the second definition of charity as set forth in World Plan. For the foregoing reasons, the Court finds that ACE's headquarters should be allocated tax exempt status under §47-1002(6).

IV. Buildings Belonging to Schools Exemption - §47-1002(10)

D.C. Code §47-1002(10) exempts:

Buildings belonging to and operated by schools, colleges or universities which are not organized or operated for private gain, and which embrace the generally recognized relationship of teacher and student.

Petitioner argues that by virtue of its various leadership training programs, ACE qualifies as a school, college, or university under §47-1002(10). ACE asserts that since 1,235 of its 1,459 members are institutions of higher education, the statute is satisfied and ACE's activities embrace the generally recognized relationship of student and teacher.

Respondent avers that petitioner is not a school, college, or university in the strictest sense, and does not

purport to offer course credit, maintain an academic faculty, or have a student body. See Washington Theatre Cl., Inc. v. District of Columbia, 311 A.2d 492, 493 (D.C. 1973).

The Court is in agreement with respondent on this issue. Although petitioner may offer training seminars and various colloquia, the Court does not believe that ACE functions as a school or university within the meaning of S47-1002(10). Accordingly, petitioner would not be granted tax exempt status based on S47-1002(10).

V. Grounds Belonging to Exempt Institutions - S47-1002(18)

Petitioner claims an exemption under S47-1002(18), which exempts:

Grounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes of any institution or organization entitled to exemption under the provisions of S547-1002, 47-1005, and 47-1007 to 47-1010.

The Court finds that the percentage of the building found to be exempt under S547-1002(17) and 47-1002(8) should correspond to the percentage of the grounds surrounding the building that is to be considered tax exempt. Accordingly, only that portion of the grounds (approximately 25 percent) is to enjoy tax exempt status until there is a full hearing on the portion occupied by the 22 members.

VI. Library Building Exemption - S47-1002(7)

Finally, petitioner, in its initial petition, claimed an exemption under S47-1002(7), which exempts:

Library buildings belonging to and operated by organizations which are not organized or operated for private gain and are open to the public generally.

The ACE library is contained within the Council's offices. Respondent alleges that the library is not open to the public, its subject matter is confined and related to ACE's particular purposes, and its existence is not adver-

tised openly. Therefore, the library does not fall within the meaning intended by §47-1002(7).

The Court finds that, although this particular claim to the exemption was not specifically enumerated by petitioner in its Proposed Findings of Fact and Conclusions of Law, the claim merits some discussion. Upon review of the record herein, the Court believes that the library does satisfy the requirements of §47-1002(7). In the instant case, there would be no effect on petitioner's tax liability given the fact that the Court has previously found ACE's offices exempt under several other sections of the Code and the library is contained within those offices. However, the Court is satisfied that the library is open to the general public. While its contents may be somewhat subject-specific, its functions fall well within the purpose contemplated by the legislature in enacting §47-1002(7). Accordingly, the Court finds that the area within One Dupont Circle occupied by the library is tax exempt under §47-1002(7).

Wherefore, it is this 30 day of May, 1986,

ORDERED that petitioner's Motion for Summary Judgment is hereby granted for the portion of the ACE property located at One Dupont Circle that is occupied by the ACE headquarters and offices. This portion is real estate tax exempt pursuant to D.C. Code §§47-1002(17), 47-1002(C), and the library would be exempt, if separate, under §47-1002(7). Accordingly, ACE is to be refunded by the District of Columbia the real property tax it has paid for Tax Years 1984, 1985, and 1986, with interest from the dates of payment; and it is

FURTHER ORDERED that petitioner's Motion for Summary Judgment regarding the area of the ACE building that is rented to the member organizations is hereby denied; and it is

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FURTHER ORDERED that respondent's Motion for Summary Judgment regarding the ACE administrative offices is hereby denied; and it is

FURTHER ORDERED that respondent's Motion for Summary Judgment for the portion of ACE that is rented to the ACE members is hereby denied; and it is

FURTHER ORDERED that petitioner is to present an Order for Proposed Refund for Tax Years 1984, 1985, and 1986 within ten days of the signing of this Order.

FURTHER ORDERED that this matter is set for a status hearing on the remaining claim of exemption of the 22 members of ACE on June 16, 1986, at 9:30 a.m. in Courtroom 21.



JUDGE IRVING G. WEISS

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