Opinion No. 1235

CLERK OF SUPERIOR COURT OF THE DISTRICT OF COLUMBIA TAX DIVISION

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

FILED

THE TRUSTEES OF AMHERST COLLEGE, c/o THE FOLGER SHAKESPEARE LIBRARY	:	
Petitioner,	:	
v.	:	Tax Docket Nos. 3197-83 and 3345-84
DISTRICT OF COLUMBIA,	:	
Respondent.	:	

OPINION AND ORDER

This matter came before the Court on February 11, 1985, on Cross Motions for Summary Judgment. The petitioner appeals from a determination by the respondent that real property owned by it is not tax-exempt. The years in question are for Tax Years 1983 and 1984. Petitioner paid taxes on the properties for the first half of Tax Year 1983, together with penalties in the amount of $21,594.72, and now asks for a full refund of that amount.[1/]

This Court has jurisdiction to hear this appeal pursuant to D.C. Code §§11-1201 and 47-3305 (1981 ed.)

1/ The original petitions for the Tax Years 1983 and 1984 concerned Lots 29, 807, 808, 809, 810, 814, 815, 816, 827, 828, 829 and 836 in Square 787 located at East Capitol and Third Streets, S.E.

However, on February 11, 1985, upon a Stipulation for Entry of Decision between the parties, the Court eliminated the proposed 1983 and 1984 assessments and taxes on Lots 810, 815, 827, and 829 in Square 787 and held that said properties are exempt from all real property taxation for Tax Years 1983 and 1984 and so long thereafter as they are used for exempt purposes. Accordingly, the Court awarded petitioner a tax and penalty refund on the subject properties, together with interest, in the amount of $6,972.33.

In addition, on April 3, 1985, the parties filed, which the Court signed, a praecipe providing that the petitioner pay taxes for 1983 and 1984 on Lots 809 and 828.

Thus the remaining real property at issue are Lots 29, 807, 808, 814, 816, and 836.

I.

The material facts of this case are not in dispute and may be briefly summarized:

1. Petitioner, the Trustees of Amherst College, is a fully-accredited, nonprofit institution of higher learning incorporated under the laws of the Commonwealth of Massachusetts, with its principal office in Amherst, Massachusetts. It has been granted an exemption from federal income taxation as an educational institution pursuant to I.R.C. §501(c)(3).

2. The Trustees of Amherst College is authorized to transact business as a foreign corporation in the District of Columbia.

3. In accordance with the last will and testament of Henry Clay Folger, the Trustees of Amherst College established the Folger Shakespeare Library (the "Library") in 1932 and it has been owned and operated by the Trustees of Amherst College since its founding.

4. The main building of the Library (Lot 31, Square 760), which is owned by the Trustees of Amherst College and is located at 201 East Capitol Street, S.E., has been granted an exemption from real property taxation by the District of Columbia. This building houses the Library collection, the Folger Theatre, and an exhibition hall. The Library collection consists of thousands of volumes of sixteenth, seventeenth and eighteenth century English literature, and is the most extensive collection of its kind in the Western Hemisphere. The Library is used as a major research and learning center by students and scholars from all over the world.

5. The Folger Institute of Renaissance and Eighteenth Century Studies ("Folger Institute") is a consortium of the Library and numerous universities which arranges for students and scholars to visit and utilize the Library for research, lectures and seminars. The Library is also available for research use by scholars from universities and other institutions, some of whom have been granted Library-sponsored fellowships.

6. The Folger Theatre Group, the Library's resident acting troupe, performs plays throughout the year in the Folger Theatre. The Theatre is open to the general public. Admission charges are insufficient to cover the expenses of operating the Theatre.

7. The exhibition hall is used for displays of materials from the Library collection and from other sources, and is open to the general public. There is no charge for admission to the exhibition hall.

8. In addition the Library conducts various programs for the general public, including tours, films and exhibits, as well as special educational programs for District of Columbia school students and teachers.

9. Each of the following properties presently at issue is owned and operated by the Trustees of Amherst College:

a. Lot 29, Square 707, situated at 12 Third Street, S.E., contains a townhouse consisting of three floors and a basement, and was acquired on or about November 10, 1965, by the Trustees of Amherst College, and has been continuously used to provide short-term accommodations for individuals who visit the Library from out-of-town. The first and third floors currently are used as housing for Library lecturers and seminar participants through the auspices of the Folger Institute. The

lecturers and seminar participants typically stay for approximately two weeks. A nominal fee for the accommodations is paid to the Library by the Folger Institute. The basement is used as an office for the Library maintenance staff and as a storage area for maintenance supplies. The second floor is currently occupied by a former employee of the Library who moved in upon commencement of his employment with the Library and who, upon termination of his employment, has refused to relinquish his lease.

b. Lot 800, Square 787, situated at 16 Third Street, S.E., contains a townhouse comprised of five rooms which was acquired by the Trustees of Amherst College on or about March 15, 1967, and which has continuously been used to provide housing for short-term visitors to the Library. The rooms currently are used to provide housing for visiting scholars who come to the Library to conduct research. The visiting scholars typically stay approximately one month, for which a nominal fee is charged.

c. Lot 807, Square 787, situated at 18 Third Street, S.E., contains a single-family house which was acquired by the Trustees of Amherst College on or about February 27, 1967. The property has been vacant since August, 1984, but prior to that date the house was continuously used as the official residence of the Director of the Library. The Director of the Library is strongly encouraged to reside in close proximity to the Library in order to fully participate in Library activities, to be available on short notice, and so that the residence may be available for entertaining on behalf of the Library. The property is frequently used for official activities and social entertaining on behalf of the Library and the

Folger Theatre Group. The Director also hosts dinners for Friends of the Folger Shakespeare Library, opening night dinners for the Theatre, dinners for visiting poets and authors, and holiday parties for the Library and Theatre staff. The Director of the Library was charged no rent for such occupancy.

d. Lot 836, Square 787, situated at 10 Third Street, S.E., contains a townhouse comprised of six rooms which was acquired by the Trustees of Amherst College on or about June 1, 1967. The rooms are used to provide short-term housing for visiting scholars who come to the Library to conduct research and typically stay for periods ranging from one day to two weeks, for which a nominal fee is charged.

e. Lot 816, Square 787, situated at 315 East Capitol Street, S.E., was acquired by the Trustees of Amherst College on or about April 24, 1970, and is the vacant side yard of Lot 815, Square 787 ("Lot 815"). Lot 815, situated at 313 East Captiol Street, S.E., contains a building used for storage by the Folger Theatre. The District of Columbia has previously determined that Lot 815 is entitled to an exemption from real estate taxation.

f. Lot 814, Square 787, situated at 311 East Capitol Street, S.E., contains an apartment building with thirteen units, which was acquired by the Trustees of Amherst College on or about August 9, 1971, and has been continuously used to provide housing for members of the Folger Theatre Group and for guest actors appearing with the troupe. The rent charged is subsidized by the Library to comply with provisions in the actors' union contract that the actors' rent may not exceed a set

percentage of their weekly salary. Twelve of the units have been vacated by the actors temporarily to allow the building to be renovated. One of the thirteen units is occupied by an outside tenant who has refused to relinquish her lease.

10. The District of Columbia has granted the petitioner exemptions from income and franchise tax, personal property tax, and sales and use tax.

II.

Petitioner seeks exemption for the subject properties, claiming that as the Trustees of Amherst College, it represents the College itself. Respondent asserts contrariwise that the Trustees of Amherst College is separate and distinct from the College, and, accordingly, that the Folger Library belongs to the Trustees, and not to Amherst College. Therefore, the issue before this Court is whether Amherst College owns the Library and the subject libraries, thereby entitling petitioner to the statutory education exemption. Having determined that these properties are entitled to exemption under D.C. Code §47-1003(10) and 10(A)(i) (1981 ed.), this Court grants the petitioner's motion for summary judgment.

In order to fall within the statutory educational exemption requirements of D.C. Code §47-1002(10) (1981 ed.), a property must belong to and be operated by a school that is not organized or operated for private gain and which embraces the generally recognized relationship of teacher and student. See Washington Theater Club, Inc. v. District of Columbia, 311 A.2d 492 (D.C. 1973).[2/] The facts demonstrate that the

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2/ Respondent argues that petitioner fails to demonstrate that the Library "embraces[s] the generally recognized relationship of teacher and student" as required by §47-1002(10) (1981 ed.). The Court notes, however, that it is not the Library which must be examined for determining petitioner's tax-exempt status, but rather, the Trustees of Amherst College. The Court concludes it is that entity from which the petitioner derives its educational, tax-exempt status.

petitioner meets the statutory requirements, since each of the subject properties belongs to and is operated by the Trustees of Amherst College, the corporate body that owns, administers, and in short, represents, the non-profit educational institution.[3/] Further, the only manner in which Amherst College can receive and hold property is through title in the Trustees. The Charter of Amherst College, enacted in 1824, Chapter 84, provides:

> That the said Trustees be and are hereby authorized to receive all the real estate, goods, chattels, choses in action, and property of every description whatever, which has heretofore been given, conveyed, purchased, bequeathed, devised, or in any other way secured, or engaged to be given, paid or devised to the Trustees of Amherst Academy.

By Act of 1931, Chapter 90, the Charter further specifically authorized the Trustees to accept the gifts and carry out the provisions under the will of Henry Folger.

Respondent argues, however, that the only property interest granted to the Trustees was an income to be used for the benefit of the College in conjunction with the discharge of the Trustees' responsibilities. The Court fails to see the distinction between the Trustees and the College that respondent attempts to draw. The will makes clear the Trustees were "to install and establish [Henry Folger's] Shakespeare collection . . . as a permanent library in a building in the city of Washington, D.C. . . ." Merely because Mr. Folger provided a trust fund to finance the establishment of this Library and included contingent trustees should those of Amherst decline their duties does not alter the title and educational character of the Library's owner.

3/ The Trustees of Amherst College have been granted an exemption from federal income taxation as an educational institution pursuant to I.R.C. §501(c)(3).

Moreover, respondent's argument is inconsistent with its past decisions regarding the tax status of the Library. Respondent previously granted the Library exemption from real property taxation for the main building of the Library known as Lot 31 in Square 760, and has agreed to grant exemptions to certain other properties owned by the Library.[4] The main Library building qualifies for exemption under D.C. Code §47-1002(10) (1981 ed.) (buildings owned and operated by educational institutions) as well as under D.C. Code §47-1002(7) (1981 ed.) (library buildings) and D.C. Code §47-1002(19) (1981 ed.) (theater buildings). Respondent contends that the subject properties are neither library buildings nor owned by Amherst College. Respondent's main objection is that the properties are not used exclusively to carry on the purposes of the tax-exempt Library. Petitioner responds, and the Court agrees, that the statute does not require that a property be used exclusively for exempt purposes in order to qualify for an exemption; and further, even if the statute did contain a "use" requirement, the subject properties, would still qualify for exemption.

Section 47-1002(10), which exempts from real estate taxation property owned and operated by colleges, does not contain any sort of "use" requirement either in letter or in spirit. To the contrary, nothing in the statute or the legislative history supports the contention that a property must be used for an exempt purpose in order to be exempt from taxation. It is entirely sufficient under the terms of the statute that the propoty is owned and operated by an exempt educational organization. Congress could have incorporated words of limitation but apparently chose not to.

4/ The [illegible] properties to which the District has agreed to grant exempt status are used for the following purposes:

1. [illegible] - [illegible] not used by Library staff
2. [illegible] - [illegible]
3. [illegible] - [illegible] and costume workshop
4. [illegible] - Library offices

The legislative history of the exemption provision reveals that on March 15, 1973, a bill was introduced to revise the real property tax exemption statute of the District of Columbia. Title I, Section 105(B)(5) of H.R. 5689 provided in pertinent part that an educational real property tax exemption for buildings be limited to:

> (5) Buildings owned by and actually occupied and used exclusively for educational purposes by an incorporated school, college, or university which (a) is not organized or operated for commercial purposes or for private gain, and (b) has educational entrance requirements of entrance examinations, and (c) has persons employed for full-time teaching and (d) embraces the generally recognized relationship of teacher and student, and (e) conforms with all applicable standards as may be determined by the Board of Education by the District of Columbia.

H.R. 5689, 93d Cong., 1st Sess. (1973). (Emphasis added).

This bill was not enacted. Instead, Congress passed the D.C. Real Property Tax Revision Act which is codified at D.C. Code §47-1001 et seq and includes §47-1002(10). Congress' decision to exclude the words "actually occupied and used exclusively for educational purposes" is clear guidance as to the parameters of the tax exemption created by Congress. District of Columbia v. Catholic University of America, 397 A.2d 915 (D.C. 1979); cf., National Automatic Laundry & Cleaning Council v. Shultz, 443 F.2d 689, 706 (1971) (positive action of Congress rejecting limiting amendments).[5/]

5/ DCMR Taxation and Assessments §222.1(b), the District of Columbia regulation promulgated under D.C. Code §47-1002, required that the property "must be occupied by and used by the organization or institution seeking exemption and must be at least one of the types or categories of exempt purposes as defined in the real estate tax exemption Act of December 24, 1942." This regulation, however, has been held invalid as inconsistent with the statute providing exemption from taxation for buildings belonging to and operated by nonprofit schools, colleges and universities. District of Columbia v. Catholic University of America, 397 F.2d at 921.

Thus, the District of Columbia statute has no "use" test and, in fact, makes no reference to the function of the property. The provision requires only that the property be owned and operated by a nonprofit educational institution.

Statutes which provide exemptions from taxation for educational institutions are to be liberally construed. Helvering v. Bliss, 293 U.S. 144, 151 (1934); Young Men's Christian Association v. District of Columbia, 124 F.Supp. 499, 452 (D.D.C.), aff'd 221 F.2d 56 (D.C. Cir. 1953). Even where tax exemption statutes are strictly construed, strict construction "does not justify the interpolation of . . . qualifications into a statute, clear in its meaning, for the purpose of defeating the privilege granted." District of Columbia v. Mt. Vernon Seminary, 100 F.2d 116, 119 (D.C. Cir. 1938). This Court finds 547-1002(10) clear in its meaning and that petitioner falls squarely within the statutory requirements, whether or not a strict construction is applied. Accordingly, petitioners are entitled to exemptions for the subject properties.

Moreover, assuming [illegible] that the [illegible] statute contained words of limitation pertaining to the use of the property, the Court concludes that the use of the subject properties for Library purposes would still be sufficient to qualify for exempt status.

A. [illegible]

Short-term housing for Library visitors is provided by (1) a townhouse on Lot 29 at 12 Third Street, S.E., for stays of approximately two weeks, (2) a townhouse on Lot 800 at 16 Third Street, S.E., which contains five apartments for one-month stays, and (3) a townhouse on Lot 800 at 20 Third Street, S.E., for stays ranging from one day to two weeks. The Court finds that such provision of properties for short-

term housing for individuals who are participating in lectures, seminars, or conducting research at the Library is an integral part of the Library's operation and promotes fulfillment of its tax-exempt purposes.

Respondent suggests tax-exempt status should be denied these properties because petitioner rents them at a nominal fee. However, the fact that rental income is produced from the properties is not a sufficient basis to assess and tax the properties. District of Columbia v. Maryland Synod of Lutheran Church, 307 A.2d 735, 737, (D.C. 1973) reh'g en banc denied (1973); cf. Howard University v. District of Columbia, 155 F.2d 10 (1946), cert. denied, 329 U.S. 739 (1946) (where the rental of dwellings and stores for the production of income to members of the general public who used the properties for activities unrelated to the exempt purposes of the university). Where, as here, the rents are nominal compared to fair market rentals and the properties are used to promote directly the essential functions of an exempt organization, the Court concludes the rental income is an insignificant factor weighing into the determination of tax-exempt status.

D. Actors' Residence

Likewise Lot 814 at 311 East Capitol Street, S.E., is housing provided by petitioner, and it also is rented for a small fee. This thirteen-unit apartment building is used to house Folger Theatre Group actors and guest actors who perform at the Folger Theatre. The rent is subsidized by the Library pursuant to the actors' union contracts and, as previously discussed, does not deprive the property of its tax-exempt status. See Maryland Synod of Lutheran Church, 307 A.2d at 737. Without this arrangement for housing, the Library would be forced to expend substantial additional sums to house the actors.

Respondent notes that the only unit of this property currently occupied, since the property is being renovated, is used by an outside tenant. However, petitioner has stated that after the property is renovated, it will again be used as housing for actors. Therefore, the Court finds that the fact that the property is temporarily vacant has no bearing on its entitlement to exempt status. Catholic Fraternity of America, 397 A.2d at 922.

C. Library Director's Residence/Short-Term Housing for Library Visitors

Petitioners seek exemption of the single-family dwelling on Lot 807 which was used for approximately fifteen years as the official residence of the Director of the Library. The housing was provided to the Director free of charge. The Library's purposes in providing such housing were to allow the Director to participate fully in Library activities, to ensure his prompt availability to attend to matters involving the Library, and to provide a convenient location for official and social Library-related entertaining. The property was in fact regularly and extensively used for these purposes.

Respondent objects to petitioner's reliance on District of Columbia v. Brookings Institution, 236 F.2d 955, 956 (D.C. Cir. 1956) for supporting exemption of the subject property. Respondent argues that Brookings Institution is specifically exempted from real property taxation pursuant to D.C. Code §47-1002(11) (1981 ed.), and that the Library, not being similarly specifically exempted, must qualify for exemption under the general provisions of the exemption statute; hence, the Library, not meeting any general exemption requirement, is not tax-exempt.

To the contrary, the Court finds the Brookings decision supportive of petitioner's stance for two main reasons. First, the use of properties in both cases is similar. In Brookings, the court granted a real property tax exemption to

the Brookings Institution from real property taxes for the residence of the director of the organization. The court noted that the director used the house for some Brookings Institution functions although he had no office there. Similarly, the Director of the Library who resided in Library-provided housing used the residence for official functions of the Library. Second, the Brookings court was faced with statutory provisions which exempted from taxation "[b]uildings" and "[g]rounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes" of several named organizations including the Brookings Institution. D.C. Code §§47-801(a(k) and 47-801a(r)(1) (1951 ed.). Where, as here, §47-1002(10) (1981 ed.) contains no "reasonably required" or "actually used" limitations and the use of the subject propety is similar to the use of the property in Brookings, the subject property clearly is entitled to an exemption from real property taxation.

Further, petitioner's present and future plans for the subject property does not prevent it from claiming tax-exempt status. The Library intends to convert the property to use for short-term housing for Library researchers, lecturers, and seminar participants, a use that the Court determines is qualified for exemption. The present vacancy of the building is only temporary and thus does not disturb its exempt status. See Catholic University of America, 397 A.2d at 927.

III.

Finally, petitioner's Lot 816, Square 767, is entitled to exemptions pursuant to D.C. Code §47-1002(10)(A)(i) (1981 ed.). That section exempts "[g]rounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes of" an exempt organization. In

District of Columbia v. Chevrah Tifereth Israel, 200 F.2d 61 (1960), the court there similarly held that a vacant lot owned by and contiguous to a synagogue was entitled to exempt status. The Chevrah court relied on D.C. Code §47-801(a) (1942 ed.), the predecessor statute to D.C. Code §47-1002 (18)(A)(i) (1981 ed.). This Court notes that petitioner acquired the additional space for possible future expansion,[6] and concludes that such vision for growth reasonably requires the acquisition and maintenance of adjacent property. In short, the Court finds the petitioner's property, like that in Chevrah, was required and used for the purposes of the exempt organization.

Therefore, the Court holds that petitioner's properties being owned by the Trustees of Amherst College, which embodies an educational, tax-exempt institution, is entitled to exemptions pursuant to D.C. Code §47-1002(18) and 18(A)(i) (1981 ed.).

Wherefore, it is this 15th day of April, 1985,

ORDERED that petitioner Trustees of Amherst College's Motion for Summary Judgment be, and hereby is, granted, and that the respondent District of Columbia's Motion for Summary Judgment be, and hereby is, denied, and it is

FURTHER ORDERED that petitioner's property constituting Lots 29, 807, 808, 814, 816, and 836 in Square 787 be and hereby are awarded tax-exempt status, and that respondent modify its records to reflect such status; and it is

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6/ Lot 836 remained vacant as of the date of the hearing, the petitioner keeping the lot available to meet any future need for extension.

FURTHER ORDERED that petitioner is entitled to a refund of the taxes it paid, including penalties and interest on the property; and it is

FURTHER ORDERED that petitioner shall submit a Proposed Order setting forth the amount of the refund within ten days of the signing of this Order.

JUDGE [illegible] G. [illegible]

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