Opinion No. 1259

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA TAX DIVISION
JUN 16 1987
FILED

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

American Council On Education	*	
Petitioner,	*	
v.	*	Tax Docket No. 3494-84
District of Columbia,	*	
Respondent.	*	

ORDER

This matter came before the Court for hearing on the parties' Cross Motions for Summary Judgment. By Order dated May 30, 1986, petitioner's, American Council on Education, (ACE) Motion for Summary Judgment was granted for the portion of the ACE property located at One Dupont Circle ("the property") that is occupied by the ACE headquarters and offices, as exempt from real property tax pursuant to D.C. Code §§ 47-1002(17), 47-1002(8) and the library if separate, under § 47-1002(7). Respondent, the District of Columbia ("the District") was accordingly ordered to refund to ACE, real property tax it paid for Tax Years 1984, 1985 and 1986 with interest from the date of payment. ACE's Motion for Summary Judgment with respect to that portion of building rented to its twenty-two (22) member organizations, was denied at that time because the Court lacked sufficient material facts to make a proper determination.

Following a development of the record with undisputed factual evidence, the present motion was filed once again raising the question whether the property occupied by twenty-two (22) ACE member organizations is exempt from real property taxes for Tax Years 1984, 1985, 1986 and 1987. The Court is satisfied the record herein, including the pleadings of counsel and attached exhibits affidavits and depositions, adequately addresses all of the factual issues in this case, leaving only a question of law for determination.

This Court has jurisdiction over this matter pursuant to D.C. Code §§ 11-1201 and 47-1009. 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 Years 1984 through 1987. 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); July 1, 1985 through June 30, 1986, (Tax Year 1986); and July 1, 1986 through June 30th, 1987, (Tax Year 1987). The tax amounts in dispute are $272,107.50 for Tax Year 1984; $389,435.20 for Tax Year 1985; $413,044.10 for Tax Year 1986; and $432,897.50 for Tax Year 1987.

3. ACE paid in a timely manner the entire tax amounts in dispute for Tax Years 1984 through 1987.

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 twenty-two (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'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.

8. ACE's primary function is to coordinate and unify the educational work and programs of its member institutions and organization[s]. 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.

9. 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.

10. ACE's membership consist of both institutions of higher education and higher education organizations. It is an umbrella organization for the entire higher education community and is the only organization that administers, coordinates and unifies all segments of that community. ACE's power and control comes from its ability to build and mold a consensus in the higher education community.

11. Although ACE, like a university, operates by consensus rather than by raw power, its efforts are enhanced by a strong interdependence between and among it and its members.

12. The cooperative efforts of ACE and its members, are facilitated by combining under one roof, at One Dupont Circle, the headquarters of ACE and twenty-two (22) major nonprofit, post secondary education support and coordinating organizations that are members of ACE. The building at One Dupont Circle constitutes the National Center for Higher Education.

13. The National Center explicitly was formed, pursuant to a grant from the Kellogg Foundation, to (1) serve as a headquarters for the major national education associations; (2) include meeting and conference facilities for the associations and their members; and (3) provide office and research facilities for college and university representatives when in Washington.

14. The following is a list of the organizations, in addition to ACE, that occupy space in the National Center pursuant to written occupancy agreements; each is a nonprofit entity:

1. American Association for Higher Education
2. American Association of Colleges for Teacher Education
3. American Association of Colleges of Nursing

4. American Association of Collegiate Registrars and Admissions Officers

5. American Association of Community and Junior Colleges

6. American Association of State Colleges and Universities

7. American College Testing Program

8. Association of American Law Schools

9. Association of American Medical Colleges

10. Association of American Universities

11. Association of Catholic Colleges and Universities (National Catholic Educational Association)

12. Association of Governing Boards of Universities and Colleges

13. Association of Independent Colleges and Schools

14. Council of Graduate Schools in the United States

15. Council of Independent Colleges

16. Council on Postsecondary Accreditation

17. George Washington University (ERIC)

18. National Association of College and University Attorneys

19. National Association of College and University Business Officers

20. National Association of State Universities and Land-Grant Colleges

21. National Council of University Research Administrators

22. National University Continuing Education Association

ACE and these twenty-two entities collectively occupy approximately 95% of the floor space in the National Center.

15. All of the educational occupants of the National Center are nonprofit entities. Space is allocated within the National Center at One Dupont Circle pursuant to explicit,

written criteria. These criteria consist of four major priority categories for assigning space to entities within the National Center. In addition, within a priority category, consideration also is given to the degree of interaction with other organizations in the building; all else being equal, organizations that interact a great deal with other building occupants receive higher priority than those that do not.

16. The unification of ACE and its major members is essential to the goals of ACE and of its members. The functions of ACE and its members are highly interdependent, however, but for the unification of these organizations in a single building, ACE and its members could not fulfill their purpose. The interdependence and cooperation within the National Center is in part a natural consequence of the interdependence of the entire higher education community, the structure of which the National Center emulates.

CONCLUSION OF LAW

Petitioner asserts the property occupied by the twenty-two ACE member organizations (the "Disputed Portion") is, like the portion occupied by ACE, exempt from real property tax for at least two independent reasons. First, the Disputed Portion of the Property is exempt under the public charity exemption of D.C. Code Ann. § 47-1002(8). Additionally, or alternatively, the Disputed Portion is exempt pursuant to D.C. Code § 47-1002(17), which exempts administrative headquarters.

The District however, maintains that for the Disputed Portion of the Property to be exempt, the twenty-two ACE member organizataions must be either "reasonably required" for the performance of ACE's functions or must be "integral parts" of ACE. Moreover, in their view, for these tests to

be met, the member organizations must be created, controlled, funded, and directed by ACE.

ACE has shown that each of the twenty-two member occupants of the Property are themselves nonprofit organizations that are responsible for the administration, coordination or unification of many segments of higher education. Each organization also uses the space it occupies as its administrative headquarters. In addition, several of the organizations' representatives testified that the organizations that occupy Property hold an equitable interest in it jointly with ACE. Accordingly, the Disputed Portion meets all of the exemption requirements of § 47-1002(17). Cf. Christian College Consortium, Inc. v. District of Columbia, Tax Docket No. 3353-84, Order at 5, 9 (D.C. Super. Ct., filed December 21, 1984)(The property at issue was exempt because each of petitioner's members met the statutory exemption requirements and the property would be exempt if it belonged to a member organization of petitioner). See also D.C. Code Ann. § 47-1002(18), which exempts property belonging to and reasonably required and actually used for the carrying on of the activities and purposes of institutions or organizations entitled to real property tax exemption.

The District argues that for the Disputed Portion of the Property to be exempt, the members' presence must be "reasonably required" for the performance of ACE's functions or the members must be "integral parts" of ACE, "in the nature of departments" of ACE through which ACE "carries on its exempt purposes."

The District's argument that the twenty-two ACE members must be "integral parts" of ACE is based on National Catholic Welfare Conference v. District of Columbia, 76 S.W.L.R. 441

(DCBTA May 7, 1948). In that case, the Welfare Conference appealed a denial of a real property tax exemption under the predecessor to § 47-1002(17) for the portion of its property occupied by several related organizations. The Welfare Conference argued that these organizations, which paid it rent for the space they occupied, were "integral parts" of a single organization." Id. at 441-442.

In considering the appeal, the Board of Tax Appeals discussed at length the purposes of the Welfare Conference and the other occupants and the fact that the rent paid was in the nature of a cost sharing and was used solely for exempt purposes. Id. at 442-43. The Board's findings of fact also states that the occupants were under the Welfare Conference's legal control in that they were created by the Welfare Conference, which, supervised their activities, approved their budgets and assigned them duties. Id. at 443. However, the Board's single conclusion of law -- that the entire property was exempt -- consists only of a single sentence and sheds no light on which of the actual findings compelled that conclusion. Id. at 443. Nowhere does the Board's decision say that it was essential to the exemption that the occupants be under the legal control of the Welfare Conference, and there is no basis to apply Welfare Conference inflexibly as Respondent urges. Cf. Conference of Major Religious Superiors of Women, Inc. v. District of Columbia, 348 F.2d 783 (D.C. Cir. 1965), which explicitly rejected Respondent's contention that to be exempt under § 47-1002(17), the petitioner must have direct authority over the entities whose activity it administers, coordinate, or unifies. Id. at 785, 786.

The District also appears to suggest that § 47-1002(17) somehow requires strict coincidence of ownership and use --

in other words, the Disputed Portion is exempt only if it is owned and used by ACE. The very cases that the District relies on however, belie its conclusion. For example, in Welfare Conference discussed above, the tax exemption was granted under the provisions of § 47-1002(17) (then § 47-801(a)(q)) to a building owned by the Welfare Conference but occupied and used by it and several other organizations. Although these other organizations were affiliated with the Welfare Conference, they were separately incorporated and were legally separate entities. 76 D.W.L.R. at 442. Similarly, in St. John's Hall, Inc. v. District of Columbia, 92 D.W.L.R. 339 (D.C. Tax Ct. February 28, 1964), exemption was granted under the predecessor of § 47-1002(17) to a residence house used by the National Catholic Welfare Conference but owned by St. John's Hall, Inc. St. John's Hall, Inc. was affiliated with the Welfare Conference, but was a separate legal entity.

The cases cited by the District fail to support its alternative contention that the occupancy of the twenty-two members in the National Center must be "reasonably required" for the performance of ACE's exempt purposes. In National Catholic Educational Association v. District of Columbia, 96 D.W.L.R. 853 (D.C. Tax Ct. May 22, 1968), property owned by the petitioner and used as a residential staff house was granted a real property tax exemption. The Tax Court found that petitioner was an organization that met the requirements of § 47-1002(17) (then § 47-801(a)(q)) and that the staff house was exempt in part because it was "reasonably required by petitioner in carrying out its purposes and work." Id. at 857.

That staff house, however, was not petitioner's administrative headquarters. Indeed, petitioner rented

separate property for use as its administrative headquarters. Id. at 857. The Court used the "reasonably required" language to overcome the technical obstacles to exemption under § 47-1002(17) that the property used as petitioner's administrative headquarters was not actually owned by petitioner and the property owned by petitioner was not used as its headquarters. Although the Court did not explicitly state, the exemption of the staff house appears to be based on § 47-1002(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 §§ 47-1002, 47-1005, and 47-1007 to 47-1010." D.C. Code Ann. § 47-1002(18).

A similar result was reached in St. John's Hall, Inc. v. District of Columbia, 92 D.W.L.R. 339 (D.C. Tax Ct. February 28, 1964), in which a residence house physically separate from the headquarters of the National Catholic Welfare Conference was exempted under § 47-1002(17)(then § 47-801a(q)) and § 47-1002(18)(then § 47-801a(r)) in part because the use of the residence house was necessary to the purposes, aims, and activities of the Welfare Conference. Id. at 342. Once again, however, this element of necessity was imposed because the residence house was not owned by the Welfare Conference itself and was not used as its administrative headquarters. Moreover, the Court explicitly acknowledged that the exemption was based in part on § 47-1002(18)(then § 47-801a(r)). In the instant case, the National Center is owned by ACE and is used as its administrative headquarters and there is no need to invoke the provisions of § 47-1002(18). Accordingly, neither National Catholic Educational Association nor St. John's Hall compels the application of any "necessity" test.

The cases discussed above demonstrate that, contrary to the District's argument, there is no single test that may be applied blindly and mechanically for determination of the entitlement to exemption of the Disputed Portion of the Property. Rather, Welfare Conference, National Catholic Educational Association, and St. John's Hall demonstrate that the law must be applied flexibly to accommodate different facts and that the proper analysis must focus on the purpose for which the Disputed Portion is used. Accord, District of Columbia v. Maryland Synod of the Lutheran Church, 307 A.2d 735, 737 (D.C. 1973); District of Columbia v. Vestry of St. James Parish, 80 U.S. App. D.C. 314, 153 F.2d 631 (1946).

The "integral part" test urged by the District is based on National Catholic Welfare Conference v. District of Columbia, 76 D.W.L.R. 441 (May 7, 1948). The similarities between the National Center and the property exempted in Welfare Conference are striking. In both, the occupants serve common purposes; in both, the activities of the occupants are administered, coordinated, or unified by the petitioners; and in both the rent received was used only to defray building costs and for other exempt purposes. See Welfare Conference, 76 D.W.L.R. at 772-43.

The only difference is that in Welfare Conference, the occupants were created by the petitioner, which supervised and directed their activities and approved their budgets. Id. at 443. The District asks the Court to mechanically require the exact same relationship between ACE and its members in order for the Disputed Portion of the Property to qualify for exemption from real property taxation. This approach ignores the intent of § 47-1002(17) and the unique nature of the higher education community.

All of the requirements urged by the District are elements of legal control, which is antithetical to the higher education community. That community operates on the basis of persuasion and collegial control, rather than raw legal power. There is no dispute that ACE did not create its members, does not control their policies or their budgets, does not fund them, and does not "assign" them duties -- at least not directly. Nevertheless, by building consensus, by promoting mutual cooperation, by providing leadership and persuasion, ACE administers, coordinates, and unifies the activities of its members just as effectively as does the Welfare Conference.

Furthermore, ACE's members are as much an "integral part" of ACE and the National Center as the Welfare Conference's affiliates are of it. ACE cannot function without the dues and support of its members. Six of the National Center occupants hold positions explicitly designated for them on ACE's Board of Directors. There are explicit criteria for occupancy in the National Center that maximize the interrelationships between, and hence the effectiveness of, ACE and its major members. Furthermore, the National Center is not operated by ACE as a landlord, but rather is operated on the basis of shared responsibility between ACE and the major educational occupants of the Center. Moreover, even if rent or income is derived from property owned by a charitable organization and used for a charitable purpose, this alone, is not a basis to preclude exemption. See The First Superet Brarch Church of Washington, D.C., Inc. v. District of Columbia, No. 3193-83, (D.C. Super. Ct. January 17, 1984)(citing to District of Columbia v. Maryland Synod of the Lutheran, 307 A.2d 735 (D.C. app. 1973).

The National Center for Higher Education was established explicitly to facilitate such cooperation, communication, economy, other benefits in furtherance of ACE's exempt purposes. The success of this effort is demonstrated by the unanimous and uncontested testimony of representatives of six major National Center occupants, each of whom attested to the benefits of coordination, unification, and administration realized by their being housed in the National Center. The testimony of these and the other witnesses describe in detail this need for the National Center, which permits sharing of facilities and services and promotes joint programs, shared ideas, cooperative efforts, and the like. Furthermore, if ACE did not need its members in the National Center, it would not set their "rent" at a level 35% below market, establish criteria for occupancy in the building, or share responsibility for building management. And if it were not essential to the coordination, unification, or administration of the ACE members' activities, those members, who directly benefit from those efforts, would not have resisted the sometimes intense external pressure to relocate their offices outside the National Center.

St. Johns Hall, Inc. v. District of Columbia, 92 D.W.L.R. 339 (D.C. Tax Ct. February 28, 1964), recognizes the "necessity" of benefits nearly identical to those provided by the National Center. That case involved the exemption of a residence house used by the National Catholic Welfare Conference to house the priests responsible for various activities of the Conference. The Court held that the

> building [St. John's Hall] and its atmosphere was intended to afford, and actually does afford the opportunity for those living therein to confer with each other and with visitors who come to do so to the advancement and benefit of the purposes, aims, and activities of NCWC."

Id. at 342 (emphasis added).

The Disputed Portion of the Property affords the same opportunity for communication and advancement of the purposes of ACE and its members that St. John's Hall provided for the Welfare Conference. Interaction, consultation, and ease of communication is a major benefit of the National Center.

The undisputed testimony establishes that ACE's purposes of administration, unification, and coordination are substantially advanced and benefited by unification in the National Center of ACE and its major members. By being in the National Center, under ACE's umbrella, these organizations are able to cooperate with one another, share services and facilities, consult with one another, and avoid duplication of effort. This is the essence of administration, coordination, and unification. Therefore, like the St. John's Hall property, the Disputed Portion is exempt as being "reasonably required" or necessary for the advancement and benefit of ACE's purposes, aims, and activities. Accord, National Catholic Educational Association v. District of Columbia, 96 D.W.L.R. 339 (D.C. Tax Ct. February 28, 1964).

Accordingly, it is on this 16th day of June, 1987,

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 its twenty-two (22) member organizations. This portion is real estate tax exempt pursuant to D.C. Code §§ 47-1002(8) and 47-1002(17). ACE is therefore entitled to be refunded by the District of Columbia the real property tax it has paid for Tax Years 1984, 1985, 1986, and 1987, with interest from the dates of payment; and it is

Further Ordered that petitioner is to present an Order for Proposed Refund for Tax Years 1984, 1985, 1986 and 1987 within ten days of the signing of this Order; and it is

Further Ordered that respondent's Motion for Summary Judgment is hereby denied with prejudice.

JUDGE IRALINE G. BARNES

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