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## Coates' Canons Blog: Difficult Exemption Questions

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To qualify for most property tax exemptions in North Carolina, property must be both owned by a qualifying taxpayer and used for a qualifying purpose. (You know that because you've read this post, right?)

A recent email from a county tax office highlights how difficult these question can become. Although you might never face the exact same scenarios as this county did, the analysis I share below should help with your next knotty exemption problem.

Here's a brief description of the two property owners in question. (Names changed to protect the innocent and the guilty, the taxable and the exempt.) Should either of these property owners be exempt?

1. Angels' Wings Aviation, Inc., a non-profit corporation that provides pilot training for religious missionaries and aviation education for youth. The taxpayer seeks an exemption under either GS 105-278.3 (religious) or GS 105-278.7 (charitable, scientific, educational). It plans to purchase a private plane that will be hangered in the county.
2. Smoky Mountains Financial Institute Inc., non-profit corporation that provides education and coaching to help individuals achieve lifelong financial independence and self-confidence in managing their personal finances. It seeks an exemption under GS 105-278.7 (charitable, scientific, educational).

First, Angels' Wings. That company cannot qualify under GS 105-278.3 because that exemption applies only to a "congregation, parish, mission, or similar local unit of a church or religious body" or a unit comprising multiple local units, such as a diocese or presbytery.

Angels' Wings may work closely with churches on their religious missionary efforts, but it is not a church itself and therefore cannot be exempted under GS 105-278.3. The same is true of religious radio stations, religious publishers, and other companies involved in religious work that are not also churches or similar religious congregation. If Angels' Wings were entirely owned or controlled by a church or religious congregation, we might be able to look through the record ownership by the non-profit corporation and pretend the church or religious congregation owned the property directly as the court did in the Fayette Place case. But assuming that's not true here, Angels' Wings can't be exempt under GS 105-278.3.

Angels' Wings has a better argument under GS 105-278.7. which is a catch-all exemption that can apply to a variety of types of owners involved in educational, scientific, literary, charitable, or cultural activities. Teaching aviation to missionaries and youth certainly could qualify as educational.

But it can't be that every flight school should be exempt from property taxes. The activity must be one run by one of the qualifying types of property owners. The statute includes a long list of qualifying organizations, none of which is well defined. Of those listed, it seems that Angels' Wings might qualify as a charitable organization, a scientific organization, or a "non-profit community" organization.

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Again, I'm not quite sure what each of those labels mean. Reasonable readers could reasonably disagree about how they should be interpreted. But when a statute creating an exemption leaves room for differing interpretations, courts generally interpret the law against the taxpayer and in favor of taxation. *In re Appeal of Martin*, 286 N.C. 66 (1974). In other words, "Taxation is the rule; exemption the exception." *Sir Walter Lodge, No. 411, Independent Order of Odd Fellows v. Swain*, 217 N.C. 632 (1940).

With that pro-taxation bent in mind, I think to qualify as an exempt organization under GS 105-278.7 the organization needs to be engaged in something other than standard commercial activity. If your organization is charging market rates for the services you provide, then your organization is just another business (regardless of what your articles of incorporation might state) and not a qualifying exempt owner.

We've seen this type of analysis before from the North Carolina appellate courts. In a case involving a non-profit summer camp, the court concluded that even though you are educating kids about the great outdoors and teaching them important life skills you can't qualify for an exemption if you are charging market rates.

Following that analysis, the key piece of information needed about Angels' Wings is the prices being charged for their educational services. If the company is charging market rates for its lessons, then I don't think it qualifies for an exemption. If it is providing those services at cost and charging well below market rates, then an exemption may be appropriate.

The potential exemption for Smoky Mountains Financial Institute, Inc. turns on the same key piece of information. If that financial non-profit charges market rates for its financial education and coaching, I don't think it can qualify for an exemption. As with Angels' Wings, the fact that the company is organized as a non-profit and provides an admirable service to the public is not sufficient to qualify for exemption. It must show that it is providing those services at a below market rate. If so, then I think an exemption under GS 105-278.7(e)(1) or (3) could apply.

Do you agree with my conclusions? Share your thoughts in the comment section below . . .

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