
Coates' Canons Blog: NC Appellate Court Defines “Ownership” For Property Tax Exemptions

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Property tax exemptions all begin with the question of ownership. Only certain types of property owners may qualify for a property tax exemption—governments, educational institutions, and religious congregations, to name a few. If the property is not owned by a qualifying owner, the property cannot qualify for an exemption even if it is used for an exempt purpose.

Consider a building used for worship services by a religious congregation. That building would be exempt under G.S. 105-278.3 only if it were also owned by that religious congregation. If the religious congregation rented that building from another owner, it would not be exempt.

Unfortunately the exemption statutes don't define exactly what constitutes ownership. Usually the issue is clear, as in the above example. But what about situations in which there is a complicated corporate ownership structure involving both qualifying and non-qualifying owners? The absence of clear statutory guidance means we need to turn to the courts to resolve those situations.

The N.C. Court of Appeals recently tackled one of those complicated exemption situations in the *Appeal of Blue Ridge Housing* case. The March 23 opinion offers for the first time a court-approved test for determining what type of ownership is needed to qualify for an exemption.

The *Blue Ridge Housing* appeal involved the taxability of Cane Creek Village, a 24-apartment low-income housing project in Bakersville, the county seat of mountainous Mitchell County, N.C.

In 2000, the county granted Cane Creek Village an exemption from property taxes under G.S. 105-278.6(a)(8). That provision exempts property “owned by . . . a non-profit organization providing housing for individuals or families with low or moderate incomes.”

In 2011, the Mitchell County assessor reconsidered Cane Creek Village's exempt status as part of his statutorily required review of the county's exempt properties. The assessor determined that Cane Creek Village did not qualify for an exemption because it was not “owned” by a non-profit.

Cane Creek Village appealed the assessor's decision first to the Mitchell County Board of Equalization and Review and then to the state Property Tax Commission, which ruled in its favor and reinstated the exemption. The county appealed to the state court of appeals, which affirmed the Property Tax Commission and ruled that the property should retain its property tax exemption.

To understand the court's decision, we first need to understand the complicated ownership structure of Cane Creek Village. Title to the property is held by Blue Ridge Housing of Bakersville LLC (“Blue Ridge Housing”). That limited liability company has two members, the equivalent of shareholders.

One member is Northwestern Housing Enterprises, Inc. (“NHE”), a non-profit corporation. It owns 0.1% of Blue Ridge Housing. The other member is a for-profit partnership named the North Carolina Equity Fund III Limited Partnership (“NCEFIII”). It owns 99.9% of Blue Ridge Housing.

NHE, the non-profit, was created for the purpose of assisting the Northwestern Regional Housing Authority (“NHRA”) to provide low-income housing in northwestern North Carolina. For property tax purposes, NHRA is considered a governmental unit. If NHRA owned the Cane Creek Village itself, the property would be exempt under G.S. 105-278.1, the governmental property exemption. But for reasons that I don't completely understand, NHRA cannot be the owner of a low-

income housing project that is receiving both federal tax credits and housing subsidies. As a result, NHRA does not own NHE and therefore has no ownership interest in Cane Creek Village.

That said, NHE itself is a non-profit and therefore may qualify for a property tax exemption under G.S. 105-278.6(a)(8) if it owns low-income housing. Problem is, NHE owns only a minute percentage of Blue Ridge Housing (and therefore Cane Creek Village). NCEFIII, the for-profit partnership that owns the remaining 99.9% of the project, is itself owned by a consortium of for-profit investors including banks and insurance funds.

Are you with me so far? We have a low-income housing project that is associated with a regional governmental housing authority. Title to the project is held by a limited liability company that is owned by both a non-profit and a consortium of investors. The non-profit owns only a teeny-tiny slice of the LLC that owns the property.

So...should this property be exempt under G.S. 105-278.6(a)(8)? That statute doesn't tell us what it means for a non-profit to "own" a particular low-income housing project. Is 100% ownership required? 50.1%? Could 0.1% possibly satisfy the ownership requirement?

Surprisingly, North Carolina courts had never faced this issue before the *Blue Ridge Housing* case. The closest an appellate court had come to the issue of "how much ownership is enough ownership?" was when the Court of Appeals held in 2008 that legal title is not determinative for property tax considerations. *Appeal of Fayette Place LLC, 193 N.C. App. 744 (2008)*. That case concluded that a property tax exemption should not be denied simply because title to the property in question is held by a non-qualifying entity, if that entity is in turn owned by a qualifying entity.

The decision in *Fayette Place* means that Mitchell County could not deny the property tax exemption for Cane Creek Village simply because title to the property is held by a for-profit corporation, Blue Ridge Housing. The county was required to look beyond that first level of ownership to see if a qualifying non-profit organization possessed a "sufficient interest in the property" to justify an exemption.

Importantly, the *Fayette Place* case did not explain exactly what constituted a "sufficient interest" because in that case a government agency owned 100% of the property in question through a variety of subsidiary entities. The case offered no insight as to whether an exemption would be justified if the qualifying entity co-owned the property with a non-qualifying entity.

In the *Blue Ridge Housing* case, the Mitchell County assessor did as required and looked beyond the title holder to see who actually owned the low-income housing project. Quite reasonably, I think, the assessor decided that the 0.1% ownership interest held by NHE, the non-profit corporation, was not sufficient to justify an exemption under G.S. 105-278.6(a)(8).

The Court of Appeals disagreed. Noting that prior cases had not provided test for defining "ownership" for purposes of property tax exemptions, the court created one:

If 100% ownership interest ultimately vests in an entity otherwise satisfying statutory exemption requirements, then the property is exempt from taxation. When an otherwise-qualifying entity has an ownership interest in less than 100% of the property, we balance the actual ownership interest with other factors indicative of ownership. If other factors strongly suggest ownership, they can outweigh even a diminutive actual ownership interest. These factors may include, but are not limited to: (i) the entity's control of the venture's operations; (ii) the entity's status as trustee of LLC property; (iii) the possibility of future increased actual ownership interest; and (iv) the intent of the participating parties.

The court applied this test to the ownership structure for Cane Creek Village and concluded that NHE, the non-profit corporation, "owned" the property for tax purposes despite the fact that NHE owned only 0.1% of the corporation that held legal title to the property.

In the court's eyes, NHE's control of Cane Creek Village's operations, its role as trustee of the property, its right of first refusal to buy the property, and the intent of NHE and the for-profit investors all argued in favor of a finding that NHE had sufficient ownership interest in the property to justify a property tax exemption.

I find the court's opinion to be well reasoned and consistent with the motivation behind ownership structures like that of

Cane Creek Village and common to other low-income housing developments. The for-profit investors are not investing in the projects to actually earn a profit on the projects themselves; they do so to gain access to the federal low-income housing tax credits that they can use to offset income earned on other investments and operations. The non-profit entity truly controls the project and will almost certainly gain 100% ownership once those tax credits expire.

What does this mean for other low-income housing projects across the state? If those projects possess ownership structures similar to that of Cane Creek Village, then the counties in which the projects reside should be exempting them under G.S. 105-278.6(a)(8).

But not all low-income housing projects will be exempt. If there is no ownership at all by a non-profit, or if the non-profit that owns a percentage of the project does not control the project or otherwise demonstrate the same interest in the project as NHE did in Cane Creek Village, then GS 105-278.6(a)(8) should not apply. Those projects should be taxable under the special appraisal rules mandated by G.S. 105-277.16.

One final note: remember that all property tax exemptions other than the one for government property requires properties to satisfy both ownership requirements and use requirements. See this blog post for more details.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278.3
- appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi05NDEtMS5wZGY=
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278.6
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278.1
- appellate.nccourts.org/opinions/?c=2&pdf=MjAwOC8wNy0xNDgzLTEucGRm
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-277.16
- canons.sog.unc.edu/?p=5643