
Coates' Canons Blog: Non-Profits, Commercial Activity, and Property Tax Exemptions

By Chris McLaughlin

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Unless you are in desperate need of a sleep aid, I assume you don't normally read law journals. But my friend Tom Kelley from the UNC Law School and I just published an article in the UNC Law Review on North Carolina property tax exemptions that might be worth your time. Unlike most law journal articles that are written for other law profs, our article should be useful to folks outside the ivory towers of academia. Tom and I wrote "North Carolina's Property Tax Exemption Conundrum," to examine how non-profits that engage in commercial activity across our state are treated when seeking religious, educational, and charitable property tax exemptions. We conclude that this treatment is inconsistent and often too restrictive, and we offer some suggestions on how local tax offices might consider resolving these difficult exemptions questions in the future.

In our view, counties and courts sometimes inappropriately deny non-profit exemptions based on commercial activity even when that activity is directly connected to the non-profits' exempt purposes. If a non-profit's commercial activity is motivated primarily by a desire for revenue, then we agree that the exemption should be denied. But if the non-profit can demonstrate that the substance of its commercial activities is part of its core exempt purpose, then we think an exemption is justified even if the non-profit earns substantial revenue from those activities.

The best example of a North Carolina non-profit whose commercial activities are intertwined with its exempt purpose might be TROSA, the drug and alcohol addiction treatment program headquartered in Durham. A key component of TROSA's treatment program is its vocational training, in which program participants work in a number of TROSA businesses such as lawn care and moving services and a framing and thrift shop. These businesses produce over \$10 million a year, representing just over half of all TROSA's funding.

Should this commercial activity, which clearly competes with for-profit businesses, disqualify TROSA from charitable exemptions for its various properties? Tom and I don't think so, because that commercial activity is key to TROSA's exempt mission of helping low-income individuals overcome substance addictions. Happily, Durham County agrees, and TROSA maintains its property tax exemptions despite its growing commercial revenue.

But other North Carolina non-profits in similar situations have seen their exemptions denied. In our article, Tom and I examine five non-profit exemption cases from across the state to see how their commercial activities relate to their exempt purpose and whether local tax offices appropriately examined that relationship.

The first case we examine is Grandfather Mountain in Avery County, which illustrates a situation in which we believe an exemption was appropriately denied because the non-profit's commercial activity—restaurants, gift shop, and fudge shop—was motivated almost entirely by revenue concerns and did not further the non-profit's educational or charitable missions.

The second case, Habitat for Humanity "REStore" in Mecklenburg County, highlights a situation in which the connection between the non-profit's charitable purpose and its commercial activity was evident but not very strong, making for a very difficult exemption decision.

Our final three case studies are situations in which the substance of the non-profits' commercial activities were intimately tied with the non-profits' educational and charitable missions. Tom and I think all three cases justified exemptions, but the counties involved did not at least initially agree. In one of these examples, the University for the Study of Human Goodness and Creative Work case from Forsyth County, the non-profit took its battle over a student-run restaurant to the state court of appeals and lost. In the other two examples, the business incubator EmPOWERment case from Orange



County and the Southern Appalachian Highlands Conservancy case from Buncombe County, the non-profits eventually obtained their exemptions but not without substantial push-back from the counties.

Before diving into these five case studies, our article explains the increased pressure in recent years on non-profits to engage in entrepreneurial activities. It also examines the history and legal treatment of non-profit exemptions in North Carolina, reviewing how courts have addressed the ownership and use requirements I first discussed in this blog post.

I'm hopeful that readers who regularly work in the area of property tax exemptions will benefit from our effort. Check it out here and share your thoughts in the comment section below . . .

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