
Coates' Canons Blog: Two New Property Tax Appeal Decisions: Jets and Churches

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[UPDATE 9/29/15: S.L. 2015-185 amended the religious exemption to exempt real property “under construction” if the property is owned by a religious organization and is intended to be used for religious purposes upon completion. “Under construction” is defined to include property for which a building permit has been issued regardless of whether construction has actual begun. The new law overrules the Court of Appeals decision discussed below.]

Property tax officials should take notice of two recent appellate decisions, one from the state Property Tax Commission in January and one from the state Court of Appeals in early June. While neither decision creates entirely new law, they provide helpful guidance to assessors navigating the confusing area of property tax exemptions.

The PTC case, *In re: Corporate Fleet Services LLC* concerned whether a private jet held for sale but used occasionally by third parties can qualify for the inventory exemption in GS 105-275(34). The Court of Appeals case, *In re: Vienna Baptist Church*, concerned whether a partially completed church building and the land on which it sits can qualify for the religious exemption in GS 105-287.3. In a nutshell, the answers were yes for the jet and no for the church. Here are the details for each case . . .

Corporate Fleet Services, LLC

This taxpayer is in the business of brokering sales of private jets. At issue was the taxation of a \$14,000,000 jet owned by the taxpayer and stored at a Cabarrus County hangar owned by Hendrick Motorsports. (I think the jet in question is still offered for sale—check this listing and remember it’s never too early to shop for my birthday gift.)

The opinion describes Hendrick Motorsports as a “partner” of Corporate Fleet Services (“CFS”). I’m not sure what that means, but I assume the two companies have some common ownership. Regardless, while the jet was held for sale at Hendrick’s hangar CFS permitted Hendrick and other third parties to use the jet occasionally.

Because the jet was used “for purposes other than demonstration for sale,” Cabarrus County rejected the taxpayer’s argument that it should qualify as exempt inventory and taxed the jet. CFS appealed that decision to the Cabarrus County Board of Equalization and Review, which affirmed the assessor’s decision.

On appeal to the PTC, the taxpayer won. The PTC concluded the jet qualified for the inventory exemption because the jet was never leased to a third party and because the third-party use “provided beneficial results” for the jet’s “maintenance and performance requirements.”

The PTC has been extremely taxpayer friendly in recent years, so while I don’t agree with the decision it doesn’t shock me. (Like this one did.) I think the county was right to question whether a jet that is used by a third party can qualify as exempt inventory. CFS was providing a benefit to one of its corporate partners when it allowed Hendrick to use the jet for free. Who knows what benefits Hendrick provided to CFS in return—perhaps free or reduced rent at the hangar? In my view, any use of property for any use other than inventory should disqualify that property from the inventory exemption even if that use does not produce immediate income.

The county chose not to appeal, which means the PTC ruling is final. Unlike court decisions, PTC decisions have no precedential effect. Other counties, courts or even future Property Tax Commissions are not bound by a prior PTC decision.

But even if future appeals on the identical issue produce identical results, the ramifications would not be severe. The absence of a formal lease between Hendrick and CFS was a major reason why the PTC granted the inventory exemption

to CFS. In many cases like this, the jets in question are formally leased out to third parties for short periods while simultaneously being held for sale. Most counties would tax those jets. The PTC decision in the CFS case provides (indirect) support for counties to continue taxing jets that are leased to third parties while also being held for sale.

Vienna Baptist Church

On January 1, 2012, the Vienna Baptist Church owned a half-completed church building on a lot in Forsyth County. It applied for a 2012 exemption under the religious property provision, GS 105-278.3. The county denied the church's application because it determined that as of the listing date (January 1, 2012) the taxpayer was not using the property "wholly and exclusively for religious purposes."

The court of appeals agreed with the county and rejected the taxpayer's appeal. Its decision was based on one very simple interpretation of GS 105-278.3: the exemption requires the existence and use of a building for religious purposes. Although a partially completed structure existed on Vienna Baptist Church's land as of January 1, 2012, the church could not use it at that point because the county had not issued a certificate of occupancy. With no usable building on the property, it was not eligible for the religious exemption despite the fact that the church occasionally used the land for campouts and similar activities.

As support for the building requirement, the court relied on a 2003 case involving a Wilmington church that unsuccessfully sought an exemption for vacant land that it used for recreational outings. *In re: Church of Yashua the Christ*, 160 NC App. 236 (2003). In that case, the court observed, "The statute is unambiguous. The focus of the exemption is on buildings. Land is exempted only to the extent necessary for convenient use of the building."

The court distinguished the Vienna Baptist Church situation from *In re: Worley*, 93 NC App. 191 (1989), in which a church successfully obtained an exemption for a vacant lot adjacent to the lot that contained its sanctuary building. GS 105-278.3(a) specifically extends the religious exemption to land adjacent to a building used for religious purposes. The court correctly pointed out that Vienna Baptist Church did not have any usable buildings on either the property in question or on adjacent property.

The requirement of a building used for exempt purposes is not limited to the religious exemption in GS 105-278.3. Identical language exists in the educational exemption (GS 105-278.4), the religious educational exemption (GS 105-278.5), the qualified retirement facility exemption (GS 105-278.6A), and the scientific, literary and charitable exemption (GS 105-278.7).

The two key findings in the Vienna Baptist Church case are applicable to eligibility questions arising under any of these statutes. First, land cannot qualify for an exemption unless it contains a building used for exempt purposes or is adjacent to land that contains such a building. Second, a partially constructed building cannot qualify as a building used for exempt purposes.

[Update: Debra Hill from Randolph County helpfully pointed out a bill currently pending in the General Assembly that would reverse the court's decision in the Vienna Baptist Church case. HB 229 would amend GS 105-278.3 to exempt partially constructed church buildings. The bill passed the House but is now stalled in the Senate. I'll be sure to update this post if the bill becomes law, which is far from certain at this point.]

Links

- www.ncga.state.nc.us/Sessions/2015/Bills/House/PDF/H229v5.pdf
- canons.sog.unc.edu/wp-content/uploads/2015/06/Corporate-Fleet-Services-LLC-11-635.pdf
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-275
- appellate.nccourts.org/opinions/?c=2&pdf=32730
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278.3
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- canons.sog.unc.edu/?p=4071
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 - www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278.5
 - www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278.6A
 - www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278.7
 - www.ncga.state.nc.us/Sessions/2015/Bills/House/PDF/H229v2.pdf