Buffalo Law Review

Volume 11 | Number 1 Article 98

10-1-1961

Taxation—Incidental Non-Religious Use of Real Property Insufficient to Defeat Tax Exemption

Jerome D. Remson

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/buffalolawreview

 Part of the Tax Law Commons

Recommended Citation

Jerome D. Remson, *Taxation—Incidental Non-Religious Use of Real Property Insufficient to Defeat Tax Exemption*, 11 Buff. L. Rev. 246 (1961).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol11/iss1/98

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

The Court finds little merit in the case of *Hoeper v. Tax Comm.*,[14] which is relied on by appellants. Factually, the case involved an income tax statute which sought to tax a husband upon the combined total of his and his wife's income. The Court observed that in the *Hoeper* case, the husband, "—unlike the trailer park owner—would have no means of recouping the additional tax resulting from the value of another's property."[15]

As to the final contention regarding possible inequities in enforcement, the Court answers simply that the problems presented are all hypothetical, and the record discloses no material inequities at this point. If they should develop, the appellants may then obtain relief. "One cannot invoke to defeat a law an apprehension of what might be done under it and, which if done, might not receive judicial approval."[16]

The judgment of the Appellate Division is thereby affirmed. To the writer the case appears correctly decided. The statute is reasonable and corrects a serious problem. It appears not only expedient but a necessity to levy the tax and place the burden of its collection on those who most readily and efficiently may accomplish this end.

P. C. B.

INCIDENTAL NON-RELIGIOUS USE OF REAL PROPERTY INSUFFICIENT TO DEFEAT TAX EXEMPTION

The New York Tax Law, Section 4 (6), provides that "the real property of a corporation or association organized exclusively for . . . religious, bible, tract, charitable . . . purposes . . . and used *exclusively* for carrying out *there upon* one or more of such purposes . . ." shall be exempt from taxation. (Emphasis added.) It appears to be within the constitutional powers of the states to tax religious and charitable organizations; so any exemption which may be granted is the result of a desire on the part of the states to foster and financially aid these institutions.[17] These exemptions are ingrained in our way of life, being in force in every state.[18]

The question of what is considered to be a charitable application of property in order to qualify for an exemption was raised in the recent case of *People ex rel. Watchtower Bible and Tract Society v. Haring*[19] which involved an 800 acre farm owned by the Jehovah's Witnesses. Approximately 95% of the farm's produce was used to feed members of the sect who worked either on the farm or at a headquarters and printing plant located in Brooklyn. Religious leaflets produced in Brooklyn and the 5% farm surplus not consumed by the sect were sold for income. The tax assessor, on the theory that the sale

14. 284 U.S. 206 (1931).
15. Supra note 5 at 540, 215 N.Y.S.2d at 492.
16. Lehon v. City of Atlanta, 242 U.S. 53, 56 (1916).
17. Van Alstyn, Tax Exemption of Church Property, 20 Ohio St. L.J. 461 (1959).
18. Id. at 462.
19. 8 N.Y.2d 350, 207 N.Y.S.2d 673 (1960).

of the surplus produce constituted a separate activity not related to the organization's religious purposes which removed the farm from the category of property used exclusively for such purposes as required by the literal wording of the statute, denied the tax exemption. On review, the special referee went further, holding that the farm was not a necessary adjunct to the religious purposes of the society.[20] The Appellate Division affirmed.[21] In reversing, the Court of Appeals held that the sale of the surplus farm produce was no more than incidental and insubstantial in relation to the primary use of the farm property. The Court felt that the consumption of the bulk of the farm produce by the working members of the sect promoted the sect's religious and educational purposes. It was irrelevant that the leaflets were produced for income since the leaflets themselves were evangelical in nature. The profit from the sale of these leaflets and the farm surplus was insufficient to transform, "evangelism into a commercial enterprise . . . [since] a religious organization needs funds to remain a going concern."[22]

Charitable organizations do not operate in a vacuum. They exist in a vibrant world which requires them to provide not only for the moral but also for the physical needs of their charges and workers. Thus, the courts have held a college cafeteria,[23] off campus houses rented to faculty members,[24] and farms used to produce food for students[25] eligible for charitable exemptions. The Court of Appeals held previously that to be entitled to the exemption, the land should be devoted to no use other than that which is necessary or fairly incident to the uses and purposes of the institution.[26] As a result of the *Watchtower* decision, it appears that the courts will merely require that a reasonable relationship be demonstrated between the use of the property and the religious purposes of the organization.

The statute specifically states that the land must be used exclusively for the charitable purposes.[27] In *Mizpah Lodge No. 518, I.O.O.F. v. Burke*,[28] the Court interpreted this to mean that the property must not only be used exclusively, but also be applied directly to the charitable purpose. When the lodge leased its property for income, the charitable exemption was denied even though the entire profits were applied to a clearly charitable use. On the basis of this precedent, the exemption should have been denied in the *Watchtower* case. In

20. Id. at 355, 207 N.Y.S.2d at 675. Relying on the term "there upon" in the statute, the referee thought the real test was, whether the operation of the farm was a part of the Jehovah's Witnesses' educational and religious programs. He found that it was not.
21. 10 A.D.2d 167, 198 N.Y.S.2d 135 (3d Dep't 1960).
22. Supra note 19 at 355, 207 N.Y.S.2d at 676.
23. Pace College v. Boyland, 4 N.Y.2d 528, 176 N.Y.S.2d 356 (1958).
24. Clarkson College v. Haggett, 277 App. Div. 732, 87 N.Y.S.2d 491 (3d Dep't 1949), aff'd, 300 N.Y. 595, 89 N.E.2d 882 (1949).
25. Seminary of Our Lady of Angels v. Barber, 42 Hun 27 (1886); N.Y. Conference of 7th Day Adventists v. Nutt, 277 App. Div. 845, 109 N.Y.S.2d 774 (4th Dep't 1952), aff'd, 304 N.Y. 706, 107 N.E.2d 654 (1952).
26. Seminary of Our Lady of Angels v. Barber, supra note 25 at 31.
27. N.Y. Tax Law § 4(6).
28. 228 N.Y. 245, 126 N.E. 703 (1920).

addition, there is authority that as a general rule the exemption should be construed strictly against the party claiming it.[29] Thus, a denial of the exemption in the present case would not have been without basis.

The exemption statute must, however, not be so strictly construed as to vitiate its purpose.[30] The purpose of this easing of the tax burden is to encourage, foster, and protect charitable institutions in view of the benefit to the community afforded by the religious, moral, and intellectual influence of these institutions.[31] The courts, then, should not be overly strict in construing charitable exemptions and should take into account modern changes in society as the result of which religious organizations may engage in not strictly religious practices in order to further their religious goals. Recent case law indicates a recognition of the fact that an indirect application of the property to a charitable or religious purpose need not defeat the statutory exemption.[32] In not requiring that the 5% surplus produce be plowed back into the ground, the Court expanded on the literal meaning of the statute. This decision, however, confirms a trend toward a more realistic application of the statute, upholding the spirit of the charitable exemption.

J. D. R.

TAX INCREASE ON HARNESS TRACKS UPHELD

In 1956, pursuant to Article I, Section 9 of the New York Constitution,[33] the Legislature added Section 45-a to the Pari-Mutuel Revenue Law.[34] In 1959 the plaintiff brought an action to compel the Harness Racing Commission to credit its construction account for Federal income taxes in lieu of Section 45-a. Before the action was tried, the Legislature enacted the 1959 amendment to Section 45-a explicitly prohibiting reimbursement for Federal income taxes.[35]

After the plaintiff had obtained the relief requested in the complaint in

29. Congregation Gedulath Mordecai v. City of New York, 135 Misc. 823, 238 N.Y. Supp. 525 (Munic. Ct. 1929).

30. Congregation Emanu-El v. City of New York, 150 Misc. 657, 270 N.Y. Supp. 6 (Sup. Ct. 1934).

31. Van Alstyne, supra note 17 at 462; Seminary of Our Lady of Angels v. Barber, supra note 25.

32. Cf. Seminary of Our Lady of Angels v. Barber, supra note 25; Clarkson College v. Haggett, supra note 24; Pace College v. Bayland, supra note 23; N.Y. Conference of 7th Day Adventists v. Nutt, supra note 25.

33. N.Y. Const. art I, § 9:
no lottery . . . except pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of the government, shall hereafter be authorized . . . ; and the legislature shall pass appropriate laws. . . .

34. N.Y. Unconsol. Laws § 7603-a(10) (McKinney 1956). The statute provides in general for a credit to a construction account for capital improvement, "until such date as the amounts paid to such harness race track from the construction account less income taxes paid thereon to the United States by such harness race track, equals the cost of capital improvement."

35. N.Y. Unconsol. Laws § 8020(10) (McKinney 1961). The statute provides that no harness race track shall be reimbursed for any Federal income taxes.