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Taxation—Tax Exemption for Charitable Organizations Performing Functions Through Independent Contractors

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purchase the land; therefore, their leasehold interest could not be reached by a real property tax. The land itself cannot be taxed since it is owned by the United States and therefore exempt from taxation.⁷

However, when one erects buildings on land leased from either the federal or state government and the lessee reserves the right to remove the buildings, title to the buildings is in the lessee and the real property tax thereon may be assessed against him.⁸ Therefore, in the instant case, the real property tax could be assessed only upon the buildings.

Tax Exemption for Charitable Organizations Performing Functions Through Independent Contractors

Pace College in the City of New York contains facilities for serving food to students and staff. These facilities are operated by a chain restaurant corporation. On the basis of this fact the Tax Commission of the City of New York withdrew \$50,000 from a previous real property exemption of \$1,200,000. The Appellate Division⁹ affirmed the final order of the Official Referee who had sustained the position of the Tax Commission in a proceeding instituted by the college to restore its exemption. In the decision in *Pace College v. Boyland*,¹⁰ from which two judges dissented, the Court reversed the position taken below and granted the petition for full exemption, holding that an educational institution does not lose any part of its exemption from real property taxes when an independent contractor operates the school cafeteria.

The majority noted that providing a cafeteria for the students of a college is one of the functions of a tax-exempt educational institution.¹¹ When the cafeteria is used exclusively for students and staff there is no reason why the tax exemption should be reduced; this is unlike the case of an exempt organization that uses its facilities to make a profit.¹² The Court analogized the situation herein presented to that of a hospital which fulfills one of its functions by providing doctors to care for patients. The doctor is like the chain restaurant providing a

7. N. Y. TAX LAW §4(1).

8. N. Y. TAX LAW §4(17); *People ex rel. Hudson River Day Line v. Franck*, 257 N.Y. 69, 177 N.E. 312 (1931).

9. *Pace College v. Boyland*, 4 A.D.2d 855, 167 N.Y.S.2d 429 (1st Dep't 1957).

10. 4 N.Y.2d 528, 176 N.Y.S.2d 356 (1958).

11. *People ex rel. Trustees v. Mezger*, 98 App.Div. 237, 90 N.Y.Supp. 488 (2d Dep't 1904), *aff'd mem.*, 181 N.Y. 511, 73 N.E. 1123 (1905); *People ex rel. Seminary of Our Lady of Angels*, 42 Hun 27 (5th Dep't 1886), *aff'd mem.*, 106 N.Y. 669, 13 N.E. 936 (1887); *In re Syracuse University*, 214 App. Div. 375, 212 N.Y. Supp. 253 (4th Dep't 1925).

12. *People ex rel. Young Men's Association v. Sayles*, 32 App. Div. 197, 53 N.Y.Supp. 67 (3d Dep't 1898), *aff'd mem.*, 157 N.Y. 677, 51 N.E. 1093 (1898).

necessary service within the scope of the purposes of a tax exempt organization, yet hospitals are not subject to real property taxes.¹³

The dissent agreed with the majority opinion in so far as it held that it is proper for a college to provide facilities for students to be fed, but by strictly construing the controlling statute¹⁴ it reached the conclusion that the college did not meet the qualifications for a complete exemption since it had a non-exempt corporation running the cafeteria. To further support this conclusion the dissent noted that the Legislature considered¹⁵ and amended¹⁶ this subdivision of the law to provide an exemption where exempt corporations lease to other exempt corporations; but, having made no provision for non-exempt corporations using the property of exempt corporation, the Legislature, the dissent reasoned, did not intend an exemption for such use. The dissent's application of the principle, *unus inclusio alterius exclusio*, does not seem to be supported by the legislative history of the amendment.¹⁷ The statute before amendment had been interpreted to deprive corporations of their real property tax exemption when they had leased to other exempt corporations. It was to eliminate this injustice that the statute was amended, not to prevent a corporation, already exempt, from carrying out its purposes through an independent contractor.¹⁸

This decision is supported by the policy expressed in the courts of this state that these statutes are not to be so strictly construed that they fail to serve their purpose, which is to encourage institutions of an educational character.¹⁹

Harness Racing Admissions Tax — Consistency of Statutes

In *County of Saratoga v. Saratoga Harness Racing Association*,²⁰ the Court held that where two acts were passed at the same session of the Legislature, the first amending a previous law so as to empower the County to levy an admissions tax on the Harness Racing Association, and the second amending the same law so as to raise the tax base on all such admissions, the two laws were not inconsistent, and the latter did not overrule the former by implication. The courts of this state do not generally favor repeal by implication²¹ and this rule

13. *People ex rel. Doctors Hospital v. Sexton*, 267 App. Div. 736, 48 N.Y.S.2d 201 (1st Dep't 1944), *aff'd mem.*, 295 N.Y. 553, 64 N.E.2d 273 (1945).

14. N. Y. TAX LAW §4(6).

15. 1948 NEW YORK LEGISLATIVE ANNUAL 291-293.

16. N. Y. TAX LAW §4(6), as amended by Laws, 1948, Ch. 622. 1948 NEW YORK LEGISLATIVE ANNUAL, *supra* note 15.

17. *People ex rel. Congregational Society of the City of New York v. Mills*, 189 Misc. 774, 71 N.Y.S.2d 873 (Sup. Ct. 1947).

18. See 1948 NEW YORK LEGISLATIVE ANNUAL, *supra* note 15.

19. *Saint Barbara's Roman Catholic Church v. City of New York*, 243 App.Div. 371, 277 N.Y. Supp. 538 (2d Dep't 1935).

20. 4 N.Y.2d 622, 172 N.Y.S.2d 230 (1958).

21. *Cimo v. State of New York*, 306 N.Y. 143, 116 N.E.2d 290 (1953).