

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

Opinion 1127

HOWARD UNIVERSITY,

Petitioner

v.

DISTRICT OF COLUMBIA,

Respondent

Docket No. 2319

MAR 12 1975

FILED

MEMORANDUM ORDER

This matter comes before the Court on the District of Columbia's motion to dismiss Howard University's petition contesting an assessment of real property taxes on the ground that the petition was not filed within six months after the date of assessment.

The facts as set forth in the petition are simple and undisputed. Petitioner, Howard University, an institution of higher learning incorporated by special Act of Congress in 1867,^{1/} and specifically exempted from real property taxes in the District of Columbia by another special Act now found in D.C. Code §47-811,^{2/} purchased from the Sisters of Holy Cross on March 7, 1974, the former Dunbarton College Campus, located at 2935 Upton Street, N.W., Lot 5 in Square 2049. Within a month after its acquisition, the property was occupied by the University's Law School and is used strictly for education. A real estate tax bill stating the first half of real estate taxes due for the property in the amount of \$50,410.33 was mailed by the District on November 1, 1974, and received by the petitioner on or before November 8, 1974. By letter dated November 8, 1974, addressed to the Director of Finance and Revenue, the petitioner requested that the property retain the exempt status it enjoyed in the hands of the prior owner, as there had been no change in its use as an educational

^{1/} Act of March 2, 1867, 14 Stat., 438, as amended May 13, 1938, 52 Stat. 351. See Howard University v. District of Columbia, 81 U.S. App. D.C. 40, 155 F. 2d 10 (1946).

^{2/} Act of June 16, 1882, 22 Stat. 105, 1973 D.C. Code §47-811.

institution by Howard University. On March 13, 1975, the Department of Finance and Revenue ruled that the property qualified for exemption from real estate taxes and placed the property in exempt status for the fiscal year 1976 beginning on July 1, 1975.

Since the letter from the City made no mention of the fiscal year 1975 real estate taxes, the University requested that the exempt status of the property be made retroactive to July 1, 1974, for fiscal year 1975. On July 31, 1975, the Department of Finance and Revenue denied that request because the application was made after the property had been assessed. Petitioner then received a final notice of real estate taxes due for the full fiscal year 1975 in the amount of \$100,820.66 on Lot 5 in Square 2049. On September 10, 1975, the petition herein was filed contesting the assessment on the ground that the property was exempt from taxation from the time of its acquisition so long as it was used for purposes authorized under petitioner's charter by virtue of the specific exemption afforded to Howard University by §47-811 of the D.C. Code, and that the six-month requirement for filing a petition was thus not applicable. Respondent's Motion to Dismiss followed.

The appeal procedure for contesting a tax assessment of property deemed to be exempt is set out in 1973 D.C. Code §47-801e, which states that the appeal shall be in the same manner as provided in §47-2403, except that payment of the tax shall not be a prerequisite to any such appeal. 1973 D.C. Code §47-2403 gives the general procedure for appealing a tax assessment. It states:

Any person aggrieved by any assessment by the District of any * * * tax or taxes, or penalties thereon, may within six months after payment of the tax together with penalties and interest assessed thereon, appeal from the assessment to the Superior Court of the District of Columbia. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment * * *.

The District of Columbia Court of Appeals has recently held that the jurisdictional six-month time requirement of §47-2403 applies to appeals from assessments of allegedly exempt property and that the period begins to run from the mailing of the notice of assessment. National Graduate University v. District of Columbia, No. 9417, D.C. App., decided October 31, 1975.

The real estate taxes in issue here for the fiscal year 1975 were under the procedures then followed necessarily based on an assessment made just before the fiscal year began on July 1, 1974.

It is conceded that on or about November 1, 1974, a statement of taxes due was mailed to Howard University. It thus received notice at that time that its property had been assessed, and so absent any contravening consideration, the statutory period of appeal began to run with the mailing of the statement. It is, therefore, clear that Howard University's petition filed on September 10, 1975, was too late to give this Court jurisdiction, unless some supervening cause or overriding factor had extended to that date the time for filing its petition.

Howard University contends that this property was exempt from taxation at the time of its acquisition, that such exemption continued automatically thereafter because its ownership was transferred from one tax-exempt institution of higher education to another, or because the Sisters of Holy Cross had theretofore assured tax-exempt status on the property for the upcoming fiscal year 1975 by filing the required Annual Use Report on February 7, 1974, reflecting the purpose for which the property had been used in the preceding calendar year, and accordingly, petitioner was not bound by the six-month limitation of §47-2403.

Howard University enjoys tax-exempt status by a specific Act of Congress (Act of June 16, 1882, 22 Stat. 105, 1973 D.C. Code §47-811). Pursuant to §47-811, the property of the University is specifically exempted from real estate taxes so long as it is used for educational purposes. This specific tax-exempt status is recognized in §47-801a(e) providing tax exemption for "[p]roperty heretofore specifically exempted from taxation by any special Act of Congress, in force December 24, 1942, so long as such property is used for the purposes for which such exemption is granted."

The exemption of property belonging to Howard University from taxation rests on §47-811 rather than on the general exemption provisions found in §47-801a(j). This, of course, is not a blanket exemption covering all property of whatever kind owned by the University; rather, such property must be shown to be used in furtherance of a purpose called for in its charter. As the Court stated in Howard University v. District of Columbia, 81 U.S. App. D.C. 40 (1946), §47-811 calls for the application of a "use test," not an "ownership test." Accordingly, under §47-801c, the University would be required to file the Annual Use Report on or before March 1st of the year following the acquisition of any property reflecting the purpose for which the property had been used during the preceding calendar year, which report forms the basis then for continued tax exemption in the following fiscal year.

This Court finds respondent's suggestion that §47-801a(e) limited the operation of the real property tax exemption of Howard University granted by the Act of June 16, 1882, 22 Stat. 105, 1973 D.C. Code §47-811 to that specific real property exempted prior

to December 24, 1942, and that, consequently, any real property acquired after that date can only qualify for exemption under the general provisions of §47-801a(j) unpersuasive. The provision found in §47-801a(e) exempting "[p]roperty heretofore specifically exempted from taxation by any special Act of Congress, in force December 24, 1942," was not intended to identify the particular property owned by an organization on the date the act was enacted, but referred rather to any specific statutory exemption in effect on that date. Since the statute providing tax exemption of real property owned by Howard University originally granted by Congress in 1882 was still in force at the time of the enactment of the Act of 1942, 56 Stat. 1089, D.C. Code §47-801a(e) must be read to incorporate the specific statutory exemption provided in §47-811.

Accordingly, we conclude that all property used by Howard University for educational purposes is ab initio exempt by statute rather than by application to the assessing authority for exemption. Likewise, since the Annual Use Report required by §47-801c to be filed by the owner of real property exempt from taxation by March 1, 1974, stating the purpose for which the property had been used during the preceding calendar year had been timely filed for the year by the Sisters of Holy Cross on February 7, 1974, prior to the acquisition of the property by Howard University, no such report was required to be filed by the petitioner, and therefore, failure to file such a report could not be the basis for loss of its tax exemption.

In the present case, however, the respondent has not contested the qualification of this property for exemption, but, on the contrary, has granted an exemption for fiscal year 1976. The only basis for denial of the exemption for fiscal year 1975 is

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that the respondent has no authority to abate the tax liability once the assessment has been made. The sole issue, then, is the nature of the relief available to petitioner, as an organization specifically exempt from taxation by statute.

The key to the solution of this question, we believe, depends on the effect of §47-811 on the usual assessment procedure. The specific statutory designation in §47-811 of Howard University as an organization whose property is to be exempt from taxation creates a presumption that its real property is exempt from taxation unless and until the City charges that it is used for a nonrelated function. This presumption, of course, may be challenged either initially by the Department of Finance and Revenue upon evidence that the property was being used for a nonexempt function, or on the basis of the Annual Use Reports required to be filed by March 1st with respect to the preceding year.

In this connection, we note that it likewise follows that, by reason of the presumption of exemption, the filing by the University of an application for exemption is not a prerequisite to its enjoyment. Such a conclusion finds support in Regulation 74-35, which, while not applicable at the time the property was acquired, became effective within a few months thereafter on December 12, 1974. Section 134(a)(5) of the Regulation excepts "property specifically exempt by Acts of Congress" from the requirement of application for exemption.

From the foregoing, we conclude that, because of the presumption of exemption afforded Howard University (D.C. Code §47-811) with respect to property used in accordance with its charter, an original assessment of taxes made against such property lacks initially the attribute of "presumption of correctness" normally attaching to an assessment. It is well-settled that, as a general rule, the

mere fact that an assessment has been made by the taxing authority is sufficient standing alone to cause the assessment to be deemed prima facie correct, and as a result, any taxpayer challenging that assessment bears the burden of proof. Pepsi-Cola Bottling Co. v. District of Columbia, 119 U.S. App. D.C. 73, 76 (1964); Petworth Pharmacy, Inc. v. District of Columbia, 335 A. 2d 256, 258 (1975). In the present case, however, the specific exemption of the University brings about an initial reversal of the positions held by the taxing authority and the taxpayer. The presumption of exemption enjoyed by Howard University deprives the assessment of the normal presumption of correctness at the time it is initially made by the tax assessor. By virtue of the presumption of exemption afforded the University, an original assessment of previously untaxed property amounts only to a determination that a challenge to the exempt status of the property is being asserted and an assessment proposed thereon. Upon notice of such action (in this instance, the first notice was in the form of a bill on November 1, 1974), a taxpayer enjoying exempt status by a specific statutory provision may seek relief in one of two ways within six months of the mailing of the notice: by application to the Director, Department of Finance and Revenue, for administrative review of the proposed tax, notwithstanding an assessment has been made, or by filing a petition with the Tax Division of the Superior Court. In the event administrative application is made to the Director within the six months following the mailing of the notice, the running of the six months' limitation on petitioner's right to file a petition in the Superior Court is suspended during the pendency of his application to the Director. We should further

note, however, that while the initial assessment does not carry its usual presumption, and the taxing authority has the burden of initiating any challenge to the right to the exemption by an assessment, once that right is challenged, the University has the burden of establishing the required use for continued exemption."

In reaching the conclusion that the Department of Finance and Revenue has the authority and power to grant an exemption after assessment here, we are not unmindful of the decision in Congregational Home of the District of Columbia v. District of Columbia, 92 U.S. App. D.C. 73, 76, 202 F. 2d 808, 811 (1953).

In that case, the Court held that "[a]fter the process of assessment has been completed -- that is, after the equalized valuations of all taxable property have been approved by the Commissioners -- the only relief available to a taxpayer, either from an incorrect valuation or from the wrongful assessment of property thought to be exempt, is by appeal to the Board of Tax Appeals" (now the Tax Division of this Court), and that "[t]he practice of applying to the Commissioners after July first for the exemption of real estate which has been administratively determined to be taxable and has been finally assessed * * * finds no support in the statutes."

While we acknowledge the holding in the Congregational case as enunciating the basic rule of general application, we believe an exception to that rule denying the availability of administrative review once an assessment has been made is required where a specific statutory exemption removes from the assessment its normal attribute of "presumptive correctness," and thus alters the effect of the assessment from "a determination" of tax liability to a "challenge to a right to continued exemption." Further support for this conclusion again may be found in the recently enacted Regulation 74-35 which, in Section 138, provides that any assessment of tax made