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GEORGIA COURT RULES INCIDENTAL USE OF PROPERTY FROM OCCASIONAL RENTAL CONSISTENT WITH NONPROFIT PURPOSE DOES NOT INVALIDATE AD VALOREM TAX EXEMPTIONS FOR NONPROFIT ENTITIES

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In *Nuci Phillips Mem'l Found., Inc. v. Athens-Clarke County Bd. of Tax Assessors*, 703 S.E.2d 648 (Ga. 2010), the Georgia Supreme Court addressed the application of an ad valorem tax exemption to a nonprofit entity that raises money by occasionally renting out its facility. The Nuçi Phillips Memorial Foundation (the "Foundation") owns and operates a facility called Nuçi's Space, which provides local musicians and others with help for depression, anxiety, and other emotional disorders. Occasionally, the Foundation rents its facility for rehearsal space, wedding receptions, and birthday parties, using the income to help fund its activities. It applied to the Athens-Clarke County Board of Equalization for an exemption from ad valorem taxation for the property on which its facility is located. The Board of Equalization granted the exemption, but the Athens-Clarke County Board of Tax Assessors challenged the grant of exemption in trial court. The trial court upheld the exemption, but the Georgia Court of Appeals reversed, basing its decision on the fact that the Foundation occasionally receives income from the rental of its facility for rehearsals, receptions, and parties. The Foundation appealed to the Georgia Supreme Court.

At issue was whether the occasional rental of the facility to raise income for the Foundation's operations means that the property was not used exclusively in furtherance of charitable pursuits, as required for ad valorem tax exemption under O.C.G.A. § 48-5-41(d)(2).

Prior to the passage of the Georgia Constitution of 1945, properties exempted from ad valorem taxation were not permitted to engage in any type of income-producing activity, whether charitable or noncharitable. After 1945, exempt properties were allowed to engage in income-producing activity as long as the primary purpose of the property was not to secure income, and any income earned was used exclusively for the institution's charitable purposes. After the amendments of 2006 and 2007, O.C.G.A. § 48-5-41(d)(2) stated that (emphasis added):

a building which is owned by a charitable institution that is otherwise qualified as a purely public charity and that is exempt

from taxation under Section 501(c)(3) of the federal Internal Revenue Code and which building is used by such charitable institution exclusively for the charitable purposes of such charitable institution, and not more than 15 acres of land on which such building is located, *may be used for the purpose of securing income so long as such income is used exclusively for the operation of that charitable institution.*

The Georgia Supreme Court reversed the court of appeals, finding that the Foundation established that its facility qualifies for ad valorem tax exemption. The facts showed that the facility is devoted entirely to the charitable purpose of helping those with emotional disorders and that such help is available to the general public. The occasional rental of the facility is an incidental use of the property, and the Foundation provided evidence that all income raised is used to further its charitable services or to offset expenses incurred in maintaining the property. Accordingly, the facility qualifies for ad valorem tax exemption under Georgia law.



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