

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CFM BUCKLEY/NORTH, LLC v. **BOARD OF ASSESSORS OF
THE TOWN OF GREENFIELD**

Docket Nos. F267442, F267443,
F272460 and F272461

LONGMEADOW OF TAUNTON, LLC v. **BOARD OF ASSESSORS OF
THE CITY OF TAUNTON**

Docket Nos. F272568 and F272569

JOHN ADAMS NURSING HOME, LLC v. **BOARD OF ASSESSORS OF
THE CITY OF QUINCY**

Docket Nos. F280611, F280612,
F272566 and F272567

Promulgated:
March 20, 2007

These are related appeals under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the appellees to grant exemptions and abate taxes on certain real estate in the Town of Greenfield and the Cities of Taunton and Quincy, assessed to the appellants under G.L. c. 59, §§ 11 and 38 for fiscal years 2003, 2004 and 2005.

In each of these appeals, the Appellate Tax Board ("Board") allowed the appellee's Motion for Judgment on the Pleadings¹ and entered a decision for the appellee.

¹ In Docket Nos. F267442, F267443, F272460 and F272461, the appellee Assessors of Greenfield filed a Motion to Dismiss, which the Board treated as a Motion for Judgment on the Pleadings.

These findings of fact and report are made pursuant to requests by the appellants under G.L. c. 58A, § 13 and 831 CMR 1.32.

Daniel E. Will, Esq. for the appellants.

David J. Martel, Esq. for the appellees, Board of Assessors of Greenfield and Taunton

Robert Quinn, Esq. for the appellee, Board of Assessors of Quincy.

FINDINGS OF FACT AND REPORT

These appeals all raise the single legal issue of whether a limited liability company ("LLC") may qualify for the charitable exemption under G.L. c. 59, § 5, cl. 3. The relevant facts necessary for resolution of this issue are essentially identical and are not in dispute. On the basis of the undisputed facts contained in the pleadings, the Board made the following findings of fact.

I. APPELLANTS

At all material times, appellants CFM Buckley/North, LLC ("Buckley"), Longmeadow of Taunton, LLC ("Longmeadow"), and John Adams Nursing Home, LLC ("John Adams") (together, "appellants") each operated a facility that provided skilled nursing home care exclusively to indigent elderly and infirm patients covered by Medicaid and/or Medicare. They each provided these services on a non-profit basis,

with no impermissible financial benefits flowing to investors.

The appellants are Delaware LLCs. Each of the LLCs has as its sole member ElderTrust of Florida, Inc. ("ElderTrust"). ElderTrust and the LLCs share officers and directors. ElderTrust is a Tennessee corporation that has as its purpose the ownership and operation of elderly care facilities, including nursing homes. It is organized for charitable purposes and is a 501(c)(3) corporation.

As LLCs, appellants are governed by "Certificates of Formation," which set forth their charitable purposes and limitations on their activities. Each of their Certificates of Formation provides that the LLC "shall serve only such purposes and functions and shall engage only in such activities as are consistent with . . . the charitable purposes and objectives of its sole member."

In addition, under Delaware law, the LLCs operate under an "Operating Agreement" which provides that ElderTrust, the sole member of the LLCs, "shall have full and complete authority, power, and discretion to manage and control the business affairs, and properties of [the LLCs], to make all decisions regarding those matters and to perform any and all acts or activities customary to the management of [the LLCs'] business."

II. JURISDICTION

A. BUCKLEY APPEALS

On January 1, 2002 and January 1, 2003, Buckley owned the land and buildings located at 95 Laurel Street in the Town of Greenfield ("Buckley property"). Buckley operated a skilled nursing home on the Buckley property known as "The Buckley Nursing Home." Buckley also owned as of January 1, 2002 and January 1, 2003 personal property located at the Buckley property that it used in connection with the operation of the Buckley Nursing Home.

For fiscal year 2003, the appellee Board of Assessors of the Town of Greenfield ("Greenfield Assessors") valued the Buckley property at \$3,679,200 and assessed a real estate tax of \$96,489.86. The Greenfield Assessors valued the personal property located at the Buckley Nursing Home at \$21,410 and assessed a personal property tax of \$454.11. The taxes were timely paid without incurring interest.

Buckley timely filed applications for abatement of the fiscal year 2003 real and personal property taxes on February 3, 2003.² The Greenfield Assessors denied the

² G.L. c. 59, § 59 requires that applications for abatement be filed: "on or before the last day for payment, without incurring interest in accordance with the provisions of chapter fifty-seven or section fifty-seven C, of the first installment of the actual tax bill issued upon the establishment of the tax rate for the fiscal year to which the tax relates." According to G.L. c. 59, § 57C, the applicable payment section for this appeal, the last day for payment is February 1st.

applications on March 19, 2003 and Buckley timely filed its fiscal year 2003 appeals with this Board on May 12, 2003.

For fiscal year 2004, the Greenfield Assessors valued the Buckley property at \$3,679,200 and assessed a real estate tax of \$96,489.86. The Greenfield Assessors valued the personal property located at the Buckley Nursing Home at \$21,410 and assessed a personal property tax of \$454.11. The taxes were timely paid without incurring interest.

Buckley timely filed applications for abatement of the fiscal year 2004 real and personal property taxes on January 29, 2004. The Greenfield Assessors denied the applications on February 4, 2004 and Buckley timely filed its fiscal year 2004 appeals with this Board on May 3, 2004.

B. LONGMEADOW APPEALS

On January 1, 2003, Longmeadow owned the land and buildings located at 68 Dean Street in the City of Taunton ("Longmeadow property"). Longmeadow operated a skilled nursing home on the Longmeadow property known as "Longmeadow of Taunton." Longmeadow also owned as of

However, in 2003, February 1st fell on a Saturday. When the last day of a filing period falls on a Saturday, Sunday, or legal holiday, the filing is still considered timely if it is made on the following business day. See G.L. c. 4, § 9; **Barrett v. Assessors of Needham, ATB Findings of Fact and Report 2004-614, 615, n. 2.** Accordingly, the Board found that the appellant timely filed his application for abatement on Monday, February 3, 2003.

January 1, 2003 personal property located at the Longmeadow property that it used in connection with the operation of Longmeadow of Taunton.

For fiscal year 2004, the appellee Board of Assessors of the City of Taunton ("Taunton Assessors") valued Longmeadow of Taunton at \$3,725,900 and assessed a real estate tax of \$73,176.68. The Taunton Assessors valued the personal property located at Longmeadow of Taunton at \$79,525 and assessed a personal property tax of \$454.11. The taxes were timely paid without incurring interest.

Longmeadow timely filed applications for abatement of the fiscal year 2004 real and personal property taxes on January 29, 2004. The Taunton Assessors denied the applications on March 4, 2004 and Longmeadow timely filed its fiscal year 2004 appeals with this Board on May 11, 2004.

C. JOHN ADAMS APPEALS

On January 1, 2003 and January 1, 2004, John Adams owned the land and buildings located at 211 Franklin Street in the City of Quincy ("John Adams property"). John Adams operated a skilled nursing home on the John Adams property known as "The John Adams Nursing Home." John Adams also owned as of January 1, 2003 and January 1, 2004 personal property located at the John Adams property that it used in

connection with the operation of the John Adams Nursing Home.

For fiscal year 2004, the appellee Board of Assessors of the City of Quincy ("Quincy Assessors") valued the John Adams property at \$1,952,000 and assessed a real estate tax of \$51,200.95. The Quincy Assessors valued the personal property located at the John Adams Nursing Home at \$38,230 and assessed a personal property tax of \$1,002.77. The taxes were timely paid without incurring interest.

John Adams timely filed applications for abatement of the fiscal year 2004 real and personal property taxes on January 29, 2004. The applications were deemed denied by inaction of the Quincy Assessors on April 29, 2004 and John Adams timely filed its fiscal year 2004 appeals with this Board on May 11, 2004.

For fiscal year 2005, the Quincy Assessors valued the John Adams property at \$2,199,400 and assessed a real estate tax of \$49,090.61. The Quincy Assessors valued the personal property located at the John Adams Nursing Home at \$36,580 and assessed a personal property tax of \$816.47. The taxes were timely paid without incurring interest.

John Adams timely filed applications for abatement of the fiscal year 2005 real and personal property taxes on January 31, 2005. The applications were deemed denied by

inaction of the Quincy Assessors and John Adams timely filed its fiscal year 2005 appeals with this Board on June 20, 2005.

On the basis of the foregoing, the Board found and ruled that it had jurisdiction to hear and decide all of the foregoing appeals filed by Buckley, Longmeadow, and John Adams.

III. BOARD'S DECISIONS

Each of the appellants sought abatement of the real and personal property taxes at issue on the grounds that it was a "charitable organization" for purposes of G.L. c. 59, § 5, cl. 3 whose real and personal property ought to be exempt from tax. The appellee assessors each filed dispositive motions arguing that, as a matter of law, LLCs are not entitled to the charitable exemption under G.L. c. 59, § 5, cl. 3. For the reasons explained in the following Opinion, the Board allowed the appellees' motions and issued decisions for the appellees in these appeals.

OPINION

Pursuant to Rule 22 of the Board's Rules of Practice and Procedure, 831 CMR 1.22, "[i]ssues sufficient in themselves to determine the decision of the Board or to narrow the scope of the hearing may be separately heard and

disposed of in the discretion of the Board." In the present appeals, the Taunton and Quincy Assessors filed Motions for Judgment on the Pleadings, while the Town of Greenfield filed a Motion to Dismiss. Despite the different captions, the basis of these motions was the same: the moving party argued that it was entitled to a decision in its favor because, as a matter of law, an LLC cannot qualify for the charitable exemption under G.L. c. 59, § 5, cl. 3.

Where the pleadings raise no genuine issues of material fact and a party is entitled to judgment as a matter of law, the Board may decide the appeal under 831 CMR 1.22. See, e.g., **Brownell v. Commissioner of Revenue**, ATB Findings of Fact and Reports 2003-324. Accordingly, because the present appeals raised no issue of material fact but only issues of law, the Board ruled that resolution of these appeals pursuant to 831 CMR 1.22 was appropriate.

G.L. c. 59, § 5, cl. 3 provides that personal and real property owned by or held in trust for a "charitable organization" is exempt from property tax.³ For purposes of

³ The charitable organization that owns the real estate, or another charitable organization, must also occupy the real estate in furtherance of the charitable purposes of the owner or occupant. This requirement is not at issue in these appeals.

Clause 3, a charitable organization is a "(1) literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth, and (2) a trust for literary, benevolent, charitable, scientific or temperance purposes."

In *Mary C. Wheeler School, Inc. v. Assessors of Seekonk*, 368 Mass. 344 (1975) the court ruled that, under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, foreign corporations could not be denied the Clause 3 exemption solely on the basis of their state of incorporation. Accordingly, the fact that the LLCs were created under Delaware law does not disqualify them from the Clause 3 exemption.

However, Clause 3 explicitly requires that the organization be "incorporated." Pursuant to G.L. c. 156C, § 2(5), LLCs are defined as "**unincorporated** organizations formed under [c. 156C] and having 1 or more members." (emphasis added). In a similar context, the Board was affirmed in its decision to deny an LLC a property tax exemption under G.L. c. 59, c. 5, clause 16, which, like Clause 5, exempts property owned by a corporation. See *RCN-BecoCom, LLC v. Commissioner of Revenue*, 443 Mass. 198, 207 (2005) ("The Board determined, and we agree, that § 5, Sixteenth, is not ambiguous. By its plain language,

it applies to corporations, not limited liability companies."). The court agreed with the Board that RCN's "voluntary election to do business in Massachusetts as a limited liability company render[ed] itself ineligible for the corporate exemption." *Id.*

Appellants attempted to distinguish *RCN* on a number of grounds. First, they point to the fact that *RCN* analyzed Clause 16 in the context of for-profit corporations, not the Clause 3 exemption for charitable organizations at issue in these appeals. However, "[a] word used in one part of a statute in a definite sense should be given the same meaning elsewhere in the statute, barring some plain contrary indication." *Connolly v. Division of Public Employee Retirement Administration, et al.*, 415 Mass. 800, 802-03 (1993). Moreover, courts and this Board routinely cite Clause 3 cases for issues arising under Clause 16 and *vice versa*. For example, in deciding a case involving the manufacturing exemption under Clause 16, the court cited and quoted a case dealing with the Clause 3 exemption for the proposition, equally applicable to the present appeals, that "[a]n exemption is a matter of special favor or grace and is to be recognized only where the property falls clearly and unmistakably within the express words of a legislative command." *Southeastern Sand & Gravel, Inc. v.*

Commissioner of Revenue, 384 Mass. 794, 796 (1981) (quoting *Children's Hospital Medical Center v. Assessors of Boston*, 353 Mass. 35, 43 (1967)).

Appellants also argued that the "functional test" used by courts to determine whether an entity qualifies for a charitable exemption under Clause 3 requires that the substance of appellants' activities, and not appellants' organizational form, should determine their qualification for the exemption. In particular, appellants cite *H-C Health Services, Inc. v. Assessors of Hadley*, 42 Mass. App. Ct. 596 (1997), where a taxpayer organized as a business corporation under G.L. c. 156B, and not as a non-profit corporation under G.L. c. 180, was granted a Clause 3 exemption. The court ruled that:

Nowhere does the statute provide that, in order to qualify as a charitable organization, the taxpayer must be incorporated under c. 180. Further, the ATB found, as we have said, that the corporate documents, and the actual operation of the appellees, were such as to qualify the appellees as "charitable organizations." . . . Nowhere is there any intimation in [*Assessors of Boston v. Vincent Club*, 351 Mass. 10, 12 (1996)] that what matters is the chapter of the General Laws under which the taxpayer was organized . . . It is substance, not form, that counts.

H-C Health Services, 42 Mass. App. Ct. at 598-99. However, although Clause 3 does not require incorporation under G.L. c. 180, it does specifically require that the

charitable organization be "incorporated." Accordingly, while the form of corporation may not control the issue of qualification under Clause 3, the plain terms of the statute require that the organization be incorporated.

The "functional test" cited by appellants and recognized by the Appeals Court in *H-C Health Services* and another case cited by appellants, *Brown, Rudnick, Freed & Gesmer v. Assessors of Boston*, 389 Mass. 289 (1983), is generally applied by the courts to determine whether a corporation, which claims to be a charitable organization, qualifies for the Clause 3 exemption. For example, in *Brown, Rudnick*, the court observed that:

When . . . a corporation has claimed an exemption as a charitable institution under [Clause 3], we have refused to allow form to control. Instead, we have looked to the declared purpose of and the actual work performed by the corporation to determine whether it was in fact operated for charitable purposes.

Id. at 303. While it is true that courts will look to the work a corporation actually performs in determining whether it is in fact a "charitable organization" for purposes of Clause 3, that does not mean that the organization's work is the only relevant criteria. If it were, real estate owned and occupied by partnerships or individuals for charitable purposes would be exempt from local taxation, a result clearly not contemplated by the statute. Rather,

the Legislature has determined that only real estate owned by "incorporated" organizations or trusts are eligible for the Clause 3 exemption. Because appellants cannot show "clearly and unequivocally that [they] come[] within the terms of the exemption," the Board ruled that LLCs do not qualify for the Clause 3 exemption. *Id.* at 303-304, (quoting *Boston Symphony Orchestra, Inc. v. Assessors of Boston*, 294 Mass. 248, 257 (1936)).

The remaining arguments raised by appellants require little discussion. Appellants argue that *RCN* is distinguishable because the result depended on the fact that LLCs do not meet the Clause 16 requirement of "a corporation subject to taxation under chapter sixty-three," a requirement that is absent from Clause 3. However, although taxability under G.L. c. 63 was a basis for the Court's ruling in *RCN* ("RCN, as a limited liability company, is not a corporation subject to taxation under G.L. c. 63. Therefore, the exemption provided by [Clause 16], does not apply"), it was not the only basis; the court also focused on the plain language of Clause 16 to rule that LLCs were not entitled to the exemption. ("The board determined, and we agree, that [Clause 16] is not ambiguous. By its plain language, it applies to corporations, not limited liability companies.").

RCN, 443 Mass. at 206-207. Accordingly, the absence of the G.L. c. 63 taxability requirement in Clause 3 does not save the appellant from the *RCN* court's ruling that an LLC cannot qualify for exemption that applies to corporations.

Moreover, even assuming that *RCN* is distinguishable, appellants are still confronted with the plain words of Clause 3 requiring a charitable organization to be "incorporated" and the principle of strict construction of exemption statutes. *Children's Hospital*, 353 Mass. at 43. Accordingly, although *RCN* supports the denial of exemption in these appeals, it is the unambiguous language of Clause 3 that compels the conclusion that LLCs do not qualify for a charitable exemption.

Appellants' also argued that because LLCs were not introduced into Massachusetts law until 1995, some ten years after the last amendment to Clause 3, the Legislature did not intend to exclude LLCs from the exemption. The issue is not, however, what the Legislature intended to exclude but what it intended to include. For example, partnerships, which share some of the flow-through attributes and other similarity with LLCs, have been recognized in Massachusetts since at least 1922, and they are clearly not within the reach of the exemption. The Legislature has determined that not every organization or

entity, but only corporations and trusts, qualify for the charitable exemption. It is not the role of the Board to extend the reach of the exemption to include other entities. If the Legislature determines that LLCs are sufficiently similar to corporations to warrant exemption under Clause 3, it is free to amend the statute.

Finally, appellants' argument that, although the LLCs own the property at issue, they really held the property in trust for their sole member, is unavailing. There is no indication that a trust relationship was intended. Rather, appellants chose this form of ownership for whatever benefits they thought they could achieve; they must, however, live with the burdens of that ownership. See e.g., *RCN*, 443 Mass. at 207.

On the basis of the foregoing, the Board ruled that LLCs do not qualify for the charitable exemption under Clause 3.

Accordingly, the Board issued decisions for the appellees in these appeals.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,
Attest: _____
Assistant Clerk of the Board