

Bond Case Briefs

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TAX - NEW JERSEY

Gourmet Dining, LLC v. Union Township

Tax Court of New Jersey - March 14, 2018 - 2018 WL 1352651

Operator and manager of restaurant in building which public university leased from the New Jersey Educational Facilities Authority (NJEFA) filed complaints contesting county board of taxation's judgments dismissing its petition of appeal challenging tax assessments by township.

Township filed motions for summary judgment and operator and manager filed cross-motion for summary judgment. The Tax Court ordered that NJEFA and university be joined as necessary parties. University joined in operator and manager's cross-motion for summary judgment.

The Tax Court held that:

- Operation and management of restaurant did not serve public purpose;
- Operation and management of restaurant was not an actual use for college purposes;
- Restaurant operator and manager was not NJEFA's agent;
- University and university foundation were not NJEFA's agents;
- Restaurant operator and manager occupied building as a tenant or lessee; and
- Statute imposing an assessment and taxation on otherwise-exempt real property based on the property's use applied to operator and manager.

Operation and management of restaurant in public-university building did not serve public purpose and, thus, was not exempt from local property tax; restaurant was not public dining establishment, provision in resolution by university's board of trustees stating certain fees paid by operator and manager would be used for scholarships did not make restaurant's operation and management a public purpose, operator and manager's employment of university students did not serve as benefit to community as a whole and was not related to government functions, and fact that restaurant was allegedly integrated into university's mission and contributed to university's academic programs did not render its operation a use for public purposes.

Operation and management of restaurant in building public university leased from the New Jersey Educational Facilities Authority (NJEFA) was not an actual use for college purposes and, thus, restaurant operator and manager was not entitled to exemption from local property taxes, even though university foundation was paid a management fee and a percentage of gross revenue before restaurant realized any profit, where intent and motive of restaurant's operations were to generate profit, operation of restaurant generated gross revenues for its operator and manager, and any profits remaining after all expenses of restaurant's operations were paid belonged to operator and manager.

Operator and manager of restaurant in building public university leased from New Jersey Educational Facilities Authority (NJEFA) was not NJEFA's agent and, thus, was not subject to exemptions from local property tax granted to NJEFA and its agents; contractual agreement by which operator and manager operated restaurant was with university foundation, rather than with NJEFA, and did not involve any transactions, sales, or leases with NJEFA, and no third parties

perceived operator and manager to have been conferred some authority by NJEFA or relied on any alleged apparent authority they perceived operator and manager to possess on behalf of NJEFA.

Public university and university foundation were not agents of the New Jersey Educational Facilities Authority (NJEFA), from which university leased a building, and, thus, operator and manager of restaurant located in building were not entitled to exemption from local property tax as agent of the university or the foundation, even though five sections of lease agreement between NJEFA and university contained the word “agents,” where agreement contained no provision or term expressly creating an agency relationship between university and NJEFA.

Operator and manager of restaurant in building public university leased from New Jersey Educational Facilities Authority (NJEFA) occupied building as a tenant or lessee and, thus, was not exempt from local property tax under the Leaseholding Taxing Act; management subcontract agreement between university foundation and operator and manager was a contract, concerned a defined property, delineated a set term of years, required operator and manager to pay a fixed annual rate, and afforded operator and manager rights that were akin to those of a lessee, including the right to exclusively occupy the property.

Statute imposing an assessment and taxation on otherwise-exempt real property based on the property’s use applied to operator and manager of restaurant in building which public university leased from New Jersey Educational Facilities Authority (NJEFA), where operation and management of restaurant failed to serve a public purpose.