

Bond Case Briefs

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In re Blue Ridge Housing of Bakersville LLC

Court of Appeals of North Carolina - March 19, 2013 - S.E.2d - 2013 WL 1110672

In case of first impression, court holds that nonprofit organization was the “owner” of low income housing development and thus development entitled to property tax exemption, even though nonprofit had only a 0.1% legal ownership interest in the development.

County appealed Property Tax Commission decision finding that housing development qualified for ad valorem tax exemption as a low income housing development owned by a nonprofit organization.

The court of appeals held that:

- As a matter of first impression, nonprofit organization was the “owner” of the development; and
- Decision did not violate equal protection or tax uniformity principles.

Legal title is not determinative as to the question of ownership for purposes of a property tax exemption; instead, where an entity qualifying for a tax exemption possesses a sufficient interest in the property, the property is said to belong to that entity, even where legal title to the property is held by another party.

Factors suggesting ownership of a property by an entity otherwise qualified for a tax exemption may include, but are not limited to: 1) the entity’s control of the venture’s operations; 2) the entity’s status as trustee of LLC property; 3) the possibility of future increased actual ownership interest; and 4) the intent of the participating parties.

In this case, the court found that nonprofit organization was the “owner” of low income housing development and thus development entitled to property tax exemption, even if nonprofit had only a 0.1% legal ownership interest in the development. Nonprofit was the sole manager of the development and made the operational decisions. Nonprofit was the trustee of the active trust involved with the development. Nonprofit had the right of first refusal to purchase the entire 100% legal ownership interest in the development. Nonprofit spearheaded the development of the project and only partnered with other owner to finance the project.