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Tax Court Denies Church's Property Tax Exemption.

The New Jersey Tax Court, in *Christian Mission John 316 v. Passaic City*, recently issued a decision refusing to allow a property tax exemption for a commercial property under construction for a new religious use. The Tax Court strictly construed N.J.S.A. 54:4-3.6 and found a religious nonprofit corporation's limited use of its property, which was under construction as of the assessing date, did not meet the requirements for a local property tax exemption.

At issue was whether the subject property was available for religious services absent a temporary or final certificate of occupancy and whether the plaintiff actually used the subject property for religious purposes. The plaintiff is a religious nonprofit corporation and owns and operates a church with an adjacent parking lot. The church and parking lot are both exempt from local property tax. In September 2009, the plaintiff purchased the adjoining property in order to expand its facilities. Between 2009 and 2012, the property was not exempt from local property tax, and the plaintiff did not appeal the decision. In late 2011, the plaintiff began significant renovations of the property to convert it from a commercial warehouse into a large sanctuary, offices and meeting space. During the construction, the plaintiff conducted 20-minute prayer sessions on the property for church members and their spouses who were part of the construction team. In 2012, the defendant city denied the plaintiff's application for a local property tax exemption for the subject property for the 2013 tax year. The plaintiff appealed the decision and moved for summary judgment.

In its decision, the Tax Court concluded the property was not exempt from local property taxes for the 2013 tax year. The court held that the 20-minute prayer sessions did not constitute "actual use" as contemplated under N.J.S.A. 54:4-3.6 because neither the public nor a majority of the plaintiff's congregation derived a benefit from the property as of the assessing date. In support of its decision, the Tax Court explained that the prayer sessions were not available to the public and were incidental to the prayer services offered by the plaintiff, and that formal religious services commenced several weeks after the assessing date of October 1, 2012. It did not matter that the goal, intent or objective was to furnish a tax-exempt purpose (religious activities), because the subject property was not in a position to provide its services or benefits to the public as of the assessment date.

The Tax Court also found that the subject property could not be considered actually in use or fully available for use under N.J.S.A. 54:4-3.6, because a temporary certificate of occupancy was not issued until April 14, 2013, roughly six months after the assessing date. The Tax Court noted that the Uniform Construction Code (UCC) "strictly prohibits use or occupancy of a structure until a certificate of occupancy has been issued." The court stated that it could not envision the New Jersey Legislature condoning a taxpayer, in order to qualify for tax exemption, attempting to make actual use of a property prior to the property having an occupancy permit. In holding that the subject property did not qualify for exemption, the Tax Court circumscribed its opinion to "properties that: (1) have not previously been granted tax exemption; (2) are experiencing new construction or renovation to permit an intended use of the property for an exempt purpose; and (3) have not been the subject of an added assessment."

The Tax Court also, in a matter of first impression, narrowly construed the Appellate Division's decision in *Society of the Holy Child Jesus v. City of Summit*, 418 N.J. Super. 365 (App. Div. 2011),

which holds that tax assessment statutes and construction and zoning laws are not to be read in pari materia, and municipalities have separate avenues of enforcement with regard to those laws. The Tax Court here relied substantially on the UCC as strictly prohibiting the use or occupancy of a structure until a certificate of occupancy has been issued as a basis for the denial of the tax exemption. However, under *Society of the Holy Child*, that would have been a non sequitur vis-à-vis the tax exemption. Even though the *Society of the Holy Child Jesus* opinion is governing legal precedent, the Tax Court took great pains to narrowly construe its holding. It is possible this extremely narrow reading may be subject to further challenge or appeal.

In light of the Tax Court's decision, exempt taxpayers should not assume property being converted to tax-exempt purposes will qualify for a tax exemption prior to the completion of construction. They therefore may wish to establish a reserve to cover the period of nonexemption. Also, tax-exempt religious entities such as churches, synagogues or mosques may want to allow the public, not just a select few, to attend or take part in any services held on the property during its construction or reconstruction, if safely or reasonably possible. Obtaining a temporary certificate of occupancy as soon as possible could be an important first step toward perfecting the exemption. Last, exempt taxpayers may want to weigh the costs and benefits of a renovation of a property that has not been previously tax-exempt if the cost of temporary taxes will be particularly significant.

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March 7, 2018

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