
Property Owned by Public Charity and Leased to a Non-Profit Providing Affordable Housing Does Not Qualify for Property Tax Exemption - Review Denied

Grand Lodge of Kentucky Free and Accepted Masons, et al. v. City of Taylor Mill et al., 14-CI02367 (Kenton Cir. Ct. Oct. 9, 2015), aff'd in part, rev'd in part, and remanded, 2015-C--001617- MR (Ky. App. Feb. 10, 2017), motion for discretionary review denied, 2017-S--000122 (Ky. June 6, 2018).

In Grand Lodge of Kentucky Free and Accepted Masons, et al. v. City of Taylor Mill et al., the Kentucky Court of Appeals held that the real property owned by a nonprofit organization but occupied by senior citizens as their residence is subject to ad valorem taxation and not subject to the charitable exemption found in Section 170 of the Kentucky Constitution. Grand Lodge of Kentucky Free and Accepted Masons ("Grand Lodge") is a recognized public charity and generally receives the constitutional exemption from property taxes on real property it owns and occupies. The property at issue in this case is a 24-acre tract of real property that Grand Lodge leases to Masonic Retirement Village of Taylor Mill, Inc. ("MRV"), a nonprofit organization with a purpose of providing and maintaining affordable housing to senior citizens. It established a retirement community in the city of Taylor Mill, Springhill Village, which is located on the real property MRV leases from Grand Lodge. The Court of Appeals first held that the residents, not Grand Lodge or MRV, were the occupants of the property for purposes of the constitutional tax exemption, explaining that the Resident Agreements gave the residents exclusive rights to occupy the property during the term of the agreement in exchange for consideration. The Court further held that there is no "occupancy" interest in real property, and that occupancy was instead a result of possession of real property. Thus, this possessory interest was enough to subject the residents to property tax under Section 170 and KRS 132.195. However, the Court of Appeals went on to hold that the individual units should be considered as leaseholds for purposes of valuation, explaining that "[t]he law is well-settled that a leasehold's fair market value for taxation purposes is obtained by subtracting the fair market value of the real property with the leasehold from the fair market value of the real property without the leasehold." The Kentucky Supreme Court denied discretionary review.

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