Bond Case Briefs

Municipal Finance Law Since 1971

TAX - NEW JERSEY

Galloway Education, LLC v. Township of Galloway

Tax Court of New Jersey - June 24, 2022 - 2022 WL 2286327

The Atlantic Community Charter School, Inc. (ACCS), a New Jersey not-for-profit corporation, was issued a charter by the New Jersey Department of Education to operate a charter school pursuant to the Charter School Program Act of 1995.

ACCS sought to expand the school facilities. Comprehensive Recovery Services, Inc., a nonprofit corporation of the State of Colorado, established Galloway Education, LLC, a Delaware limited liability company. The sole member, which has all the interest in Galloway Education, is Comprehensive Recovery Services.

To fund the expansion project, bonds which totaled $11,165,000 were sold by Galloway Education to investors of Hamlin Capital Management, LLC, a for-profit investment firm located in New York. Hamlin is designated the Bondholder Representative so long as the majority of the outstanding bonds are owned by persons for whom Hamlin serves as an investment advisor. The proceeds of the bonds were utilized by Galloway Education to purchase the land and construct an addition to the school.

Galloway Education sought exemption from property taxes as a not-for-profit entity. Galloway sought the exemption under a 1931 amendment exempting properties utilized for the moral and mental improvement of men, women and children that are owned by a holding company.

The Tax Court noted that, although there exists a lease agreement between Galloway Education and ACCS, a closer review of the lease agreement shows that the Bondholder Representative exercises significant control as would a landlord. Even outside default, the Bondholder Representative has significant control over the property and also has a say over the operations of the school.

Essentially, the school is merely a tenant of the property under a lease and pledge agreement in which the Bondholder Representative has extensive control. The powers conferred to the Bondholder Representative ensure the flow of revenues from the school to the bondholders and that this situation is not much different than a for-profit entity directly leasing its property to the school.

“It is one thing for a lender or a Bondholder Representative to have a mortgage on a property owned by a non-profit, it is quite another thing for a profit-making entity to have the ability to seize and obtain full and unfettered control of the not-for-profit entity for its own purposes.”

“Here, the structure of deal is plainly for the benefit of the bondholders represented by the Bondholder Representative. Control of the nominally not-for-profit Galloway Education can be transferred at the demand of the Bondholder Representative to a for-profit to protect the profits of the bondholders. The not-for-profit in this case exists to benefit a for-profit endeavor.”

“There is nothing sinister or wrong with the Bondholder Representative ensuring that a profit is made. The court realizes that the avenues for financing would be limited without the potential for a

profit. However, a tax exemption here would allow ‘indirect taxpayer subsidization’ of the bondholders. This would confer a competitive advantage upon the bondholders at the expense of the other taxpayers in the municipality.”

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com