



State & Local Tax Advisory ■

JULY 30, 2014

Alston & Bird SALT Team Secures a Proportional Exemption for an Atlanta Charity

In an important decision with the potential to have long-lasting effects on Georgia property tax law, the Alston & Bird State & Local Tax (SALT) Team recently secured summary judgment for the Piedmont Park Conservancy (“the Conservancy”) in Fulton County Superior Court on the Conservancy’s claim that its charitable property is entitled to a “proportional” exemption from ad valorem tax.

In *Piedmont Park Conservancy v. Fulton County Board of Tax Assessors*, the Fulton County Superior Court held that county boards of tax assessors must provide a proportional charitable exemption for real property that is owned and used by a charitable organization, but partially leased for commercial purposes.¹ The Conservancy is a nonprofit organization whose mission is to preserve and enhance Piedmont Park, a large city park in Midtown Atlanta. In 1999, the Conservancy acquired property near the park’s edge to use for its offices and to host programming for the park’s visitors; beginning that year, it received a tax exemption under O.C.G.A. § 48-5-41(a)(4) for the entire property as a qualifying “institution of purely public charity.” The Conservancy continued to use the property for offices and programming; however, in 2001, in response to requests from park visitors, it leased a portion of the property to two retail restaurants. The Fulton County Board of Tax Assessors (the “Board”) continued to treat the property as exempt until 2013, when—more than a decade after the Conservancy first leased a portion of the property—the Board revoked the Conservancy’s charitable exemption for the entire property.

After exhausting its administrative appeals, the Conservancy filed an action in Fulton County Superior Court claiming, among other things, that the Board was required to grant a proportional exemption to the portion of the property used by the Conservancy for its charitable purposes. The Board, in response, took the position that a retail lease on any portion of real property renders the entire property ineligible for a charitable tax exemption.

¹ Order Granting, In Part, and Denying, In Part, Cross Motions for Summary Judgment, *Piedmont Park Conservancy v. Fulton County Bd. of Tax Assessors*, Civ. Action No. 2013-CV-239260 (Fulton County Super. Ct. May 19, 2014) (Lee, J.).

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In an order issued May 19, 2014, the Fulton County Superior Court granted summary judgment for the Conservancy on its claim for a proportional exemption, noting that two prior decisions of the Georgia Court of Appeals had previously held that county boards of assessors are capable of identifying the exempt and non-exempt portions of real property and holding that county boards must, therefore, recognize proportional exemptions where appropriate.² Accordingly, the court held that portions of the Conservancy's property should be exempt so long as those portions satisfied the three requirements for charitable exemption set forth in *York Rite Bodies of Freemasonry of Savannah v. Board of Equalization of Chatham County*:

- (1) First, the owner must be an institution devoted entirely to charitable pursuits;
- (2) [S]econd, the charitable pursuits of the owner must be for the benefit of the public; and
- (3) [T]hird, the use of the property must be exclusively devoted to those charitable pursuits.³

The court then concluded that because it was "undisputed" that portions of the Conservancy's property satisfied the *York Rite* requirements, those portions were exempt as a matter of law. Finally, contrary to the Board's insistence, the superior court held that a taxpayer is not required to legally separate real property into individual tax parcels in order to receive the proportional exemption.

The superior court denied the Board's subsequent motion to reconsider its summary judgment order and entered its Final Order on June 17. The Board has filed a notice of appeal to the Georgia Court of Appeals, and Alston & Bird will represent the Conservancy in the appeal.

² See, *Peachtree on Peachtree Inn, Inc. v. Camp*, 120 Ga. App. 403 (1969) (authorizing a proportional exemption for a charitable property in Fulton County that had rented a portion of the property to two retail establishments); *Lamad Ministries, Inc. v. Dougherty County Board of Tax Assessors*, 268 Ga. App. 798 (2004) (holding that county tax assessors are "fully capable of separating the tax exempt property from nonexempt property and assessing for tax purposes each property appropriately where required").

³ 261 Ga. 558, 558 (1991) (numbering added).

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