



State & Local Tax Advisory ■

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Georgia Court of Appeals Upholds Proportional Property Tax Exemptions for Charitable Institutions

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 a judgment for the Piedmont Park Conservancy in the Court of Appeals of Georgia. With its decision in *Fulton County Board of Tax Assessors v. Piedmont Park Conservancy*,¹ the court held that a charitable organization that leases a portion of its real property to a third party may continue to enjoy a charitable property tax exemption on the remainder of the property.

The Conservancy is a charitable organization whose mission is to preserve and maintain Atlanta's Piedmont Park. The Conservancy owns a parcel of land adjacent to the park that consists primarily of a single building and a parking lot. After originally receiving a property tax exemption on the parcel as an "institution of purely public charity" under O.C.G.A. § 48-5-41(a)(4), the Conservancy leased just over one quarter of the space in the building to two for-profit restaurants. The Conservancy continued to occupy a majority of the property for its own purposes and used all of the proceeds from the leases in furtherance of its charitable mission; nevertheless, because of the leases to the for-profit restaurants, the Fulton County Board of Tax Assessors revoked the Conservancy's charitable exemption and assessed property tax on the entire parcel.

Last summer, the Superior Court of Fulton County ruled in favor of the Conservancy and held that it was entitled to a proportional tax exemption for its charitable property. The court of appeals has now affirmed that decision, confirming that Georgia law has permitted charities to raise income from their charitable properties for "at least forty years." After an extensive review of the history of the exemption statute, the court of appeals held that a qualifying charitable institution may produce income from a portion of its property without jeopardizing its exemption on the non-income-producing portion of its property *so long as* (1) the primary purpose of the property as a whole is not to secure income and (2) the income is used exclusively for the organization's charitable purposes. The court soundly rejected the board of assessors' argument that recent amendments to Georgia's property tax exemption statute

¹ *Fulton County Board of Tax Assessors v. Piedmont Park Conservancy*, No. A15A0356 (Ga. Ct. App. July 16, 2015).

forbid a charitable institution from using any portion of its property to produce income while maintaining tax-exempt status.²

The court of appeals' decision in *Piedmont Park Conservancy* should give comfort to the numerous charitable organizations in Georgia that find themselves in a similar situation—renting out a minority portion of a property to a private restaurant, gift shop or other business and then using the lease funds in furtherance of the charity's mission. According to the court of appeals, this activity cannot destroy the charitable exemption on the remainder of the property used for charitable purposes.

The Fulton County Board of Assessors has until July 27, 2015, to move for reconsideration or to petition the Georgia Supreme Court to hear the case.

² In particular, the court emphasized that the addition of O.C.G.A. § 48-5-41(d)(2) was intended to expand the application of the exemption, rather than to narrow it.

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