

Property Tax Exemption Briefing for Nonprofits

July 27th 12:30 – 1:30

Agenda:

1. Brief overview of situation and status of current Supreme Court Case Bob Sleppy - Nuci's Space
 2. Overview of legislative action & notice of Tax Commission work
 3. Formulate coalition to work the Ways & Means Committee and to define a common point of view
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Background:

Nonprofit organizations rely on property and sales tax exemptions to provide vital services to their clients. These exemptions are outlined in O.C.G.A. § 48-5-41 and include the following:

PLACES OF RELIGIOUS WORSHIP

NO RENT SINGLE FAMILY HOUSING OWNED BY RELIGIOUS ORGANIZATIONS

PURELY PUBLIC CHARITIES

ALL PLACES OF BURIAL

NONPROFIT HOSPITALS

EDUCATIONAL INSTITUTIONS

AIR OR WATER POLLUTION FACILITIES

NONPROFIT HOMES FOR THE AGED OR MENTALLY DISABLED

VETERANS ORGANIZATIONS

HISTORICAL FRATERNAL BENEFIT ASSOCIATIONS CHARTERED PRIOR TO JANUARY 1, 1880.

Over the past several years, there have been numerous challenges by county tax assessors regarding individual nonprofit situations. For example, the Telfair Museum in Savannah has fought two property tax exemption challenges over the past decade and Habitat for Humanity Atlanta fought a challenge two years ago related to its Restore. Recently, Nuci's Space in Athens has been fighting a property tax challenge and this case has been heard in the Supreme Court of Georgia (see summary memo by Alston & Bird). Each of these types of challenges, and there have been many throughout the state, is expensive to individual nonprofits relative to both time and money required to defend. And, as cases are lost, the definition of "charity" becomes increasingly narrow. Essentially, these cases are incrementally defining what is considered a charity in Georgia.

As local governments are challenged to find revenue, these types of property tax challenges are becoming more common. Minnesota and North Carolina, among numerous other states, have successfully passed legislation to clarify the term that appears in the State Code - "purely public charities" - and to provide a standard method of assessing exemption (see Minnesota example attached).

The Nuci decision (if decided against Nuci's) could swiftly impact all Georgia Charities that use buildings or land for fee generation, for example arts groups that rent space for receptions, groups like Salvation Army or Goodwill that operate thrift stores, land rented to nonprofit camps, etc. Therefore, we believe that a follow up *Amicus* brief in response to the Assessors' supplemental brief is advisable. Alston and Bird is taking the lead in filing it and currently have the following groups listed in the follow up: Woodruff Arts Center, Atlanta Landmarks/Fox Theatre, Atlanta Botanical Garden, Callaway Foundation, Georgia Aquarium, Atlanta History Center, Fernbank, Georgia Center for Nonprofits, Harper Fowlkes House.

However, regardless of the outcome, a more permanent fix, which would relieve numerous charities of ongoing legal costs of fighting these challenges, is the goal and this can only be done through legislation.

Legislative Fix - Background

There were some collaborative attempts to correct this issue in last year's legislative session, the Georgia Center supported SB 513 and HB 462

(http://www.broc.state.ga.us/legis/2009_10/sum/sb513.htm)

(http://www.legis.state.ga.us/legis/2009_10/sum/hb462.htm)

SB 513 had new language to allow nonprofits to lease their property to 3rd parties as long as the proceeds came back to the nonprofit for its own use or to another nonprofit. GCN testified along with the Morgan county attorney who talked about Camp Twin Lakes and some cultural nonprofits who had preserved historic properties and let them be used by others. We talked about the wedding and event rental that many are engaged in and indicated that Goodwill had similar issues. (Goodwill also uses its properties for the thrift stores and other supportive employment, so that some of its building uses make money and look more like for-profit businesses). Sen. Grant asked the Committee to consider amendments that Tom Bauer and GCN drafted. ACCG and GMA said they supported the concept and acknowledged the current law is problem. Sen. Chance from Fayette County is Chair of Senate Finance and held the bill from a vote and seemed to be supporting a study committee this summer. SB 513 remained in the Senate Finance Committee.

Goodwill authored HB 462, sponsored by Rep. Allen Peake (R-Macon), it failed. This was an attempt by Goodwill Industries to amend current law in O.C.G.A. § 48-5-41 relating to the ad

valorem tax exemption provided to certain qualified charitable institutions and the buildings that those entities own which generate income. HB 462 was held in the House Ways and Means Committee.

Other

The Tax Commission will convene on July 28th. This issue may come up and we will be monitoring and keeping nonprofits updated on those deliberations. Nonetheless, the sales tax exemptions enjoyed by most hospitals, colleges, universities and about 38 unique subsets of C3 orgs will be on the table and we believe it will be hard to retain them.

Moving Forward:

1. Georgia needs a large and inclusive (not just Atlanta) nonprofit coalition that will activate around the tax commission particularly issues related to retaining sales and property tax exemptions. There is not a nonprofit representative on this commission and if we do not have a voice in this commission's deliberations, we may be too late to stop legislation offered by the commission which could be even more unfavorable for the sector.
2. This same or another subset of this group needs to collaboratively work on a legislative approach regardless of the commission that will correct the ambiguity in the current code as it relates to charitable purposes that are exempt and how these are applied.

Next Steps:

1. Background meeting on July 27th; background materials distributed; **Goal is : Identification of core group to plan legislative remedy;**
2. Amicus #2 filed by end of July by Alston & Bird – need non-Atlanta representation
3. Decision on Nuci V Athens Clarke by Supreme Court sometime in the fall – GCN will monitor and keep larger sector informed.
4. Tax Commission begins meetings July 28th 1PM Room 606 Coverdell Legislative Office Building: GCN will monitor and represent; we encourage nonprofits to do the same

Background Materials:

1. YORK RITE BODIES OF FREEMASONRY OF SAVANNAH et al. v. BOARD OF EQUALIZATION.
2. Georgia Code - Revenue and Taxation - Title 48, Section 48-5-41
3. Nuci V Athens Clark Appeal
4. Nuci V Athens Clark - Supplemental brief by Athens Clarke
5. Amicus #1 by GCN
6. Minnesota tax legislation process