

LEGAL AND REGULATORY NOTES, APRIL 2017

Taxpayers must exhaust local administrative remedies in questions of tax-exempt status

In the case of *Vermont College of Fine Arts v. City of Montpelier*, 2017 VT 12, the Vermont Supreme Court found that property owned by the nonprofit organization Vermont College of Fine Arts (VCFA) was not tax exempt for the two years that the property was leased to the State of Vermont. More significantly with respect to our members, the Court also cleared up the confusion surrounding the legal process by which taxpayers assert that a parcel of property is tax exempt, ruling that taxpayers must first exhaust the administrative remedies available at the local level before appealing to the superior court.

The property at issue in the case is a building on the VCFA campus known as Schulmaier Hall. In 2012 and earlier, the City of Montpelier was not collecting taxes on that building. In 2013 and 2014, when the state began renting from VCFA, the city assessor determined that the property was no longer tax exempt. VCFA did not appeal the city assessor's decision to the city's board of civil authority (BCA) but instead filed an action in superior court seeking a declaratory judgment from the court that the property was tax exempt for the two rental years. The college argued that the property was tax exempt as a "public school," or, alternatively, through the "public use" clause under state law. The superior court found in favor of the city and VCFA appealed to the Vermont Supreme Court.

Although one of the main issues on appeal was whether Schulmaier Hall was tax exempt in 2013 and 2014 under 32 V.S.A. § 3802(4) (the Court ruled that it was not¹), the Court also addressed an important subject matter jurisdiction issue that had long been an uncertainty for taxpayers, town officers, and even the superior courts. (Subject matter jurisdiction is the extent to which a court can rule on the conduct of persons or the status of things.) Typically, if taxpayers are upset with the appraised value of their property, state law requires that they file a grievance with the listers. If the issue is not resolved at that level, taxpayers may then appeal to the BCA. Finally, if taxpayers are still unsatisfied with the result, they may appeal to the Vermont Department of Taxes, the director of Property Valuation and Review, or to the superior court. Towns and taxpayers understand and adhere to this well-known statutory process for appealing one's

¹ A property may be tax exempt as a "public school" if it is "owned or leased by" by a college, academy, or public school, and is used in furtherance of educational purposes, provided that it is not "rented for general commercial purposes." *Burr & Burton Seminary v. Town of Manchester*, 172 Vt. 433 (2001). Consequently, because VCFA had leased out two-thirds of Schulmaier Hall to the State of Vermont for non-educational purposes for an annual revenue stream of "approximately \$400,000," the Court ruled that the property failed to qualify for the "public school" exemption. Additionally, the Court found that the property was not tax exempt under the "public use" clause either. A property owned by one nonprofit leased to another nonprofit may be tax exempt when there is "a concurrence of nonprofit ownership and use," whereby the two nonprofits share a "single mission." Here, the Court ruled that even though the rental agreement was between two nonprofit organizations, VCFA and the State of Vermont do not share a singular mission. Therefore, the Court ruled that the property for the two years in question – 2013 and 2014 – was not tax exempt.

appraised property value, generally without issue. (See 32. V.S.A. §§ 4221 et. seq.) The issue addressed by the Court in this case was whether taxpayers must traverse the same local tax appeals process, as described above, in questions of *tax-exempt status*.

The city argued that VCFA's case should have been dismissed for failure to exhaust the local administrative remedies before filing an action in superior court. Specifically, the city claimed that the superior court lacked jurisdiction to rule on tax-exempt status via a declaratory judgment because VCFA needed to first appeal the city assessor's decision to the BCA. VCFA responded "that the BCA does not have authority to rule on questions of tax-exempt status, and that consequently [appealing] a decision of tax-exempt status to the BCA would be futile."

On appeal, the Vermont Supreme Court ruled that while "VCFA should have exhausted its administrative remedies" it would nonetheless address the merits of the case "in recognition of [the Court's] own inconsistent precedent regarding exhaustion in the specific case of" tax exemption under 32 V.S.A. § 3802(4). In other words, the Court considered VCFA's tax-exempt claim even though it could have simply dismissed it for lack of subject matter jurisdiction. Generally, courts will dismiss an action for lack of subject matter jurisdiction if a party has failed to exhaust administrative remedies. However, here the Court explained that VCFA should not be punished with dismissal because the Court has been historically unpredictable in its own rulings on whether exhaustion of administrative remedies in the context of tax exemption is a prerequisite to filing a declaratory judgment in superior court.

Putting its inconsistencies to bed, the Court finally clarified *why* administrative exhaustion is required in tax-exempt claims. Specifically, the Court explained that the "process of determining the taxable status of property" begins with the compiling of the grand list, and that the applicable state law "indicates that the listers of a town or city have the responsibility to determine whether a property is taxable or exempt, because they must list the exempt parcel in the grand list." Furthermore, the Court interpreted the statutory language broadly, stating that it authorizes property owners to "challenge the decision of the listers on *any matter*, including the tax-exempt status of a property." (Emphasis added.) Given the statutory scheme for creation of the grand list and the wide latitude for the BCA to "hear and determine ... *all* questions and objections," the Court concluded that taxpayers must exhaust administrative remedies in questions of tax-exempt status.

The takeaway here for town officers is that before taxpayers file a declaratory judgment in superior court seeking a ruling that their property is tax exempt, they must first exhaust the administrative remedies available at the local level. This means that taxpayers must first traverse the local tax appeals process that we are all familiar with – i.e., a grievance to the listers (or assessor) followed by an appeal to the BCA – before initiating a claim in the superior court.

The case is archived [here](#).

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