

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 9, 2005 Session

**AMERICAN HERITAGE APARTMENTS, INC. v. BILL BENNETT, TAX
ASSESSOR OF HAMILTON COUNTY, ET AL.**

**Appeal from the Chancery Court for Davidson County
No. 01-889-I Irvin H. Kilcrease, Chancellor**

No. M2003-02595-COA-R3-CV - Filed August 18, 2005

A nonprofit corporation which owns an apartment complex that provides housing to low-income individuals applied for an exemption from *ad valorem* property taxes pursuant to Tenn. Code Ann. § 67-5-212. The Assessment Appeals Commission of the State Board of Equalization determined that the owner was not entitled to a property tax exemption, and the Davidson County Chancery Court affirmed the denial of exemption. The owner appealed. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

Charles A. Trost, Michael G. Stewart, Brett R. Carter, Nashville, Tennessee, for the appellants, American Heritage Apartments, Inc.

Paul G. Summers, Attorney General and Reporter; and Gary R. Hotvedt and Jonathan N. Wike, Assistant Attorney General, for the appellee, Bill Bennett, Tax Assessor of Hamilton County; William Nobles, Trustee of Hamilton County; County of Hamilton; and Tennessee State Board of Equalization.

OPINION

The property owner, American Heritage Apartments, Inc. (AHA), is a nonprofit corporation under the Tennessee Nonprofit Corporation Act. It is exempt from federal income taxes pursuant to §501(c)(3) of the Internal Revenue Code of 1986, as amended. According to its corporate charter, AHA's purpose is, in pertinent part:

- (a) To own and/or operate, housing facilities and properties, apartment complexes, and other multi-family housing units, of which not less than 35 percent of all dwelling units will be designated for providing affordable housing

to low and very low income families. Of the 35 percent, not less than 20 percent of the units will be designated for very low income families.

(b) To provide housing facilities and services to meet social, physical, and financial needs of residents, tenants and occupants and to contribute to their health, security, happiness and well-being.

....

AHA purchased Park Ridge Apartments, a 168-unit facility in Hamilton County, Tennessee, in 1994 from the Resolution Trust Corporation (RTC) as part of RTC's Affordable Housing Disposition Program, as set forth in 12 U.S.C. § 1441a(c). Under this program, AHA was required to lease 35% of the units at Park Ridge to low- and very low-income persons for a period of forty years at rates established by the United States Department of Housing and Urban Development. In exchange, AHA received guaranteed purchase and rehabilitation loans at low interest rates.

In May of 1999, AHA filed an application with the State Board of Equalization (Board) seeking to have Park Ridge Apartments deemed exempt from *ad valorem* property taxation pursuant to Tenn. Code Ann. § 67-5-212, the statute governing property tax exemptions for property owned by charitable institutions. The Board's "designee" denied AHA's application for exemption, reasoning that property such as Park Ridge was to be considered for exemption only under Tenn. Code Ann. § 67-5-207, authorizing exemption for low- and very low-income housing, rather than Tenn. Code Ann. § 67-5-212, exempting property of charitable institutions. Moreover, the designee reasoned that Park Ridge did not qualify for exemption under Tenn. Code Ann. § 67-5-207, because AHA's purchase of Park Ridge was not financed by one of the federal housing programs specifically enumerated within the statute.

AHA appealed to the Board. An evidentiary hearing was conducted by an administrative law judge who upheld the denial of exemption and issued extensive findings of fact and conclusions of law. The administrative law judge concluded:

In this appeal, AHA concedes that the apartment complex is not covered by the provisions of Tenn. Code Ann. section 67-5-207 [low cost housing]. (Footnote omitted.) AHA contends, however, that it qualifies for at least a pro rata exemption of the Park Ridge Apartments as a "charitable institution" under Tenn. Code Ann. section 67-5-212 [charitable institutions].

....

[A]ssuming that AHA is a charitable institution within the meaning of Tenn. Code Ann. section 67-5-212, the administrative judge respectfully concludes that the subject property is not exemptible under the terms of that section. AHA's acquisition and rental of this property undoubtedly advanced the objectives set forth in the corporation's charter. Nevertheless, these apartments are really "occupied" not by officers or employees of AHA, but by lessees unaffiliated with the organization. The mere presence of a resident manager and other employees (e.g., maintenance and security personnel) commonly involved in the operation of

an apartment complex does not negate this fact. Generally, rental property is not eligible for exemption under Tenn. Code Ann. section 67-5-212. See Tusculum College v. State Board of Equalization, 600 S.W.2d 739 (Tenn. Ct. App. 1980).

Consistent with this view, in response to the question of whether a HUD-financed housing project not exempted by Tenn. Code Ann. section 67-5-207 was exempt under Tenn. Code Ann. section 67-5-212, the Tennessee Attorney General has opined as follows:

. . . [I]t is a rule of thumb that the expression of one subject in a statute implied the exclusion of others. (Citation omitted.) Here, the singling out of housing for the elderly and handicapped by T.C.A. section 67-5-207 implies the exclusion of housing for other groups.

Another maxim of statutory construction is that the legislature is presumed to be cognizant of other statutes germane to the subject. (Citation omitted.) Also, statutes dealing with the same subject are to be read **in pari materia**, . . . , and the legislature is presumed not to have intended to do a useless and vain thing. (Citations omitted). Here, if the properties in question were tax exempt under T.C.A. section 67-5-212, there would have been no need for the legislature to have enacted section 67-5-207. The former statute is general while the latter is specific. The specific controls over the general.

Tenn. Atty. Gen. Op. 87-108, p.2.

To be sure, the opinion was issued before the creation of the RTC pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Significantly, however, the RTC's Affordable Housing Disposition Program had been in existence for some time when the General Assembly decided to exempt the low-income and very-low-income housing projects identified in Tenn. Code Ann. section 67-5-207(d). (Footnote omitted.) The administrative judge must infer, then, that the legislature was aware of that program and did not intend to confer tax-exempt status on any portion of housing projects financed by RTC.

. . . .

It is therefore, ORDERED that the subject property shall not be exempt from ad valorem taxation.

AHA appealed to the Board's Assessment Appeals Commission. It argued that all 168 units at Park Ridge Apartments were exempt from taxation, not just the 35% rented to low- and very low- income tenants. AHA asserted that the units rented at market rents created an uplifting environment for the low-income tenants and should therefore be considered part of AHA's

mission. The Commission held, as did the administrative law judge, that AHA did not qualify for exemption under Tenn. Code Ann. §67-5-207 or Tenn. Code Ann. §67-5-212.

Having exhausted its administrative appeals, AHA filed a Petition for Review in the Davidson County Chancery Court. Both AHA and the Board filed motions for summary judgment. The trial court granted the Board's motion for summary judgment and denied that of AHA, holding that AHA was not a charitable institution under Tenn. Code Ann. § 67-5-212 and did not qualify for a property tax exemption for low-income housing under Tenn. Code Ann. § 67-5-207. AHA appealed.

AHA argues that it is a charitable institution eligible for exemption from property taxation under Tenn. Code Ann. § 67-5-212 and that the trial court's holding is contrary to established law and is unsupported by the administrative record. AHA contends that its "entire operation is devoted to providing subsidized apartments for low income individuals" and that its efforts improve conditions in the community as a whole. AHA does not assert that it is entitled to exemption under Tenn. Code Ann. § 67-5-207.

AHA filed its Petition for Review pursuant to Tenn. Code Ann. § 4-5-322 and Tenn. Code Ann. § 67-5-1511. Tenn. Code Ann. § 67-5-1511 instructs, in pertinent part:

(a) The action of the state board of equalization shall be final and conclusive as to all matters passed upon by the board, subject to judicial review, and taxes shall be collected upon the assessments determined and fixed by the board.

(b) The judicial review provided in subsection (a) shall consist of a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue.

Thus, the possibility of presenting additional evidence before the trial court differentiates this type of case from review of most administrative decisions. Even so, judicial review of decisions rendered by the Board of Equalization falls under the Uniform Administrative Procedures Act contained in Tenn. Code Ann. § 4-5-322(h). *Spring Hill v. Tennessee State Board of Equalization*, No. M2001-02683-COA-R3-CV, 2003 WL 23099679 (Tenn. Ct. App. Dec. 31, 2003) (citing *Willamette Industries, Inc. v. Tenn. Assessment Appeals Comm'n*, 11 S.W.3d 142, 147 (Tenn. Ct. App. 1999)).

Courts generally will defer to decisions of administrative agencies when those agencies are acting within their area of specialized knowledge, experience, and expertise. *Willamette Industries, Inc.*, 11 S.W.3d at 146 (Tenn. Ct. App. 1999) (quoting *Wayne County v. Tenn. Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 279 (Tenn. Ct. App. 1988)). Thus, judicial review of such determinations is governed by the narrow standard contained in Tenn. Code Ann. § 4-5-322(h) rather than the broad standard of review used in other civil appeals. *Wayne County*, 756 S.W.2d at 279. Accordingly, Tenn. Code Ann. § 4-5-322(h) provides that the court may

reverse or modify the decision of the agency if the petitioner's rights have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (5) Unsupported by evidence which is both substantial and material in the light of the entire record.

Tenn. Code Ann. § 4-5-322(h)(1)-(5). The scope of appellate review of an administrative decision is the same as that used in the trial court. *Gluck v. Civil Serv. Comm'n*, 15 S.W.3d 486 (Tenn. Ct. App. 1999). We must review the findings of fact upon the standard of substantial and material evidence. *Id.* Substantial and material evidence "requires something less than a preponderance of the evidence but more than a scintilla or glimmer." *Wayne County*, 756 S.W.2d at 280. This court may not substitute its judgment concerning the weight of the evidence for that of the Board. *Jones v. Bureau of TennCare*, 94 S.W.3d 495, 501 (Tenn. Ct. App. 2002) (citing *Gluck*, 15 S.W.3d at 490). When reviewing a trial court's review of an administrative agency's decision, this Court essentially is to determine "whether or not the trial court properly applied the . . . standard of review" found at Tenn. Code Ann. § 4-5-322(h). *Jones*, 94 S.W.3d at 501 (quoting *Papachristou v. Univ. of Tennessee*, 29 S.W.3d 487, 490 (Tenn. Ct. App. 2000)).

Article II, § 28 of the Tennessee Constitution subjects all property to taxation, however, it grants the legislature authority to exempt certain property held and used for purposes purely religious, charitable, scientific, literary, or educational. Tenn. Code Ann. § 67-5-212, the statute upon which AHA relies, grants such a tax exemption. It instructs, in pertinent part:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific or nonprofit educational institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created. . . .

Tenn. Code Ann. § 67-5-212(a)(1). A charitable institution is defined as "any nonprofit organization or association devoting its efforts and property, or any portion thereof, exclusively to the improvement of human rights and/or conditions in the community." Tenn. Code Ann. § 67-5-212(c). Moreover, the Tennessee Supreme Court has defined charity as follows:

Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life,

or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Baptist Hospital v. City of Nashville, 3 S.W.2d 1059, 1060 (Tenn. 1928).

AHA is not eligible for exemption under Tenn. Code Ann. § 67-5-207 nor is it seeking exemption under that statutory provision.¹ However, as this court recognized in *Christian Home for the Aged, Inc. v. Tennessee Assessment Appeals Comm'n.*, 790 S.W.2d 288 (Tenn. Ct. App. 1990), housing may qualify as a charitable purpose under Tenn. Code Ann. § 67-5-217. Thus, Tenn. Code Ann. § 67-5-207 is not the exclusive means by which AHA may seek the exemption from property taxation. AHA is entitled to seek the exemption as a charitable institution under Tenn. Code Ann. § 67-5-212, but must prove it qualifies as a charitable institution under the criteria of that section. AHA's nonprofit status does not ensure its exemption from property taxes. *City of Memphis v. Alpha Beta Welfare Ass'n.*, 126 S.W.2d 323, 326 (Tenn. 1939). It also must be determined whether AHA devotes "its efforts and property, or any portion thereof, exclusively to the improvement of human rights and/or conditions in the community." Tenn. Code Ann. § 67-5-212(c). Even so, as this court held in *Tusculum College v. State Board of Equalization*, 600 S.W.2d 739 (Tenn. Ct. App. 1980), rental property is generally not eligible for exemption under Tenn. Code Ann. § 67-5-212.

AHA purchased Park Ridge Apartments from the RTC as part of the RTC's Affordable Housing Disposition Program. The RTC program was implemented, in part, for "preservation of the availability and affordability of residential real property for low- and moderate-income individuals." 12 U.S.C. § 1441a(b)(3)(C)(v). 12 U.S.C. § 1441a(c)(6) provides that the RTC may provide loans "at below market interest rates to the extent necessary to facilitate an expedited sale of eligible residential property and permit . . . a public agency or nonprofit organization to comply with the lower-income occupancy requirements applicable to the purchase. . . ." *Id.* Here, AHA agreed to make at least 35% of the units at Park Ridge available at rates set by the United States Department of Housing and Urban Development for low- and very low-income tenants, in exchange for RTC's guarantee of purchase and rehabilitation loans to AHA at low-interest rates. While it is undisputed that AHA leases at least 35% of its units at Park Ridge to low- and very low-income families at below-market rates, its reason for doing so is not the benevolence of the organization but the fact that such is a condition of the federal government's low-interest loan to AHA. Consequently, AHA's operation of Park Ridge does not lessen the burden of government by making housing available to low-income persons at below-market rates, rather it is actually a condition of AHA's federal funding. AHA purchased the property at a discount, received a rehabilitation loan to refurbish the property and is compensated for all of the apartments it rents, though some are at a reduced rate.

It is for all these reasons that we find that AHA is not providing charitable services, its 501(c)(3) status notwithstanding, and is therefore not entitled to exemption from *ad valorem*

¹ As stated previously, Tenn. Code Ann. § 67-5-207 authorizes property tax exemption for low income housing if financed by one of several enumerated federal housing programs. The financing utilized by AHA was not one listed in the statute. Additionally, Tenn. Code Ann. § 67-5-207 instructs that to qualify for exemption, the not-for-profit's charter must provide in substance that, "The directors and officers shall serve without compensation." AHA's Form 1990 from 1997 shows compensation of officers, directors, etc. to be \$222,694.

property taxation. The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the Appellant, American Heritage Apartments, Inc.

FRANK G. CLEMENT, JR., JUDGE