



Divided Appellate Court Denies Tax Exemption for Sale-Leaseback Property

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The Fourth District Appellate Court recently found that the Department of Revenue correctly denied a property tax exemption where a charitable organization sold a property to a limited liability company formed by a concerned donor and then leased the property back under terms intended to have given the charity sufficient control over the property to qualify for an exemption. While the decision in *OKO, LLC v. Department of Revenue* involves a charitable organization, it may have several applications to school districts. First, charitable property tax exemptions are very similar to school property tax exemptions. Both types of property must be owned and used by the exempt organization. And, both types of property may not be leased or otherwise used with a view to a profit. Second, the decision instructs potential applicants on who should apply for an exemption in a lease situation. Finally, although the majority in *OKO* finds against granting an exemption, the dissent puts forward a strong argument for the exemption, which may be useful to school districts that find themselves in a similar situation in the future.

In 2007, the mortgage on the Old Kings Orchard Community Center (the “Center”) in Decatur was going to be foreclosed. A local businessman who wanted to help the Center agreed to purchase the property through a for-profit, limited liability company and then lease the property back to the Center under terms intended to result in a continued tax exemption. OKO, LLC, the new owner of the property, applied for the exemption. The exemption was denied, however, because the property was not owned by a charitable organization.

According to the majority, the exemption was properly denied for the simple reason that OKO conceded that it holds title to the property, and OKO is not a charitable organization. As a result, the property was not exempt in ownership as required by Section 15-65 of the Property Tax Code. The majority reached this conclusion despite the fact that the lease provisions were drafted to comply with the reasoning in two prior Appellate Court cases that found charitable organizations renting property may have sufficient indicators of ownership to qualify for an exemption. The majority distinguished the prior decision on the grounds that in those cases the lessee had applied for the exemption, while here the lessor was applying for the exemption.

While this decision may seem to be a setback for school districts seeking an exemption for one of their own properties involved in a sales-leaseback transaction, the dissent provides a strong argument for granting an exemption under these circumstances. The dissent starts by pointing out that just because there is a high standard for obtaining an exemption, that fact does not require every exemption application to be denied. And while OKO, LLC applied for the exemption, it was also the party receiving the tax bill. But, the dissent said, whether OKO, LLC or the Center applied for the exemption should not matter. What should matter is whether the Center retained sufficient elements of ownership under the lease so that it could be considered the equitable owner of the property. According to the dissent, the Center did retain enough elements of ownership under the lease to justify granting an exemption in this case.

Although on the surface this case is a simple matter of the wrong party applying for an exemption, more important legal arguments regarding the leasing of exempt properties lie just below the surface. This decision provides further insight into the evolving law of property tax exemptions.

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