Taxation, exemption for educational property

Number: AGO 2012-15

Date: April 25, 2012

Subject:
Taxation, exemption for educational property

The Honorable Kenneth M. Wilkinson
Lee County Property Appraiser
Post Office Box 1546
Fort Myers, Florida 33902-1546

RE: PROPERTY APPRAISER--EDUCATIONAL PROPERTY--PERSONS--whether tax exemption for educational property is available when school owned by different person than real property. ss. 1.01 and 196.198, Fla. Stat.

Dear Mr. Wilkinson:

On your behalf, your attorney, Mr. John J. Renner, has requested my opinion on substantially the following question:

Is land deemed "owned by an educational institution" for purposes of an educational exemption from taxation under section 196.198, Florida Statutes, where the school is owned by a corporate entity and the land owned by a different corporate entity and the same two people are the sole members in both entities?

In sum:

An educational exemption from taxation is not available pursuant to section 196.198, Florida Statutes, where the educational institution is owned by a corporate entity and the real property is owned by a different corporate entity although the same two people are the sole members of both entities.

According to information submitted with your request, School, LLC, operates a private school on real property leased from Land, LLC. Mr. and Mrs. Jones are the sole members of School, LLC, and Land, LLC. The property is used exclusively for educational purposes. Land, LLC, has applied for an educational exemption from ad valorem taxation. The Lee County Property Appraiser does not believe Land, LLC, qualifies for the exemption because the school is not owned by the "identical persons who own the property" since Land, LLC, owns the property, but owns no part of the school. As discussed more fully herein, this office concurs in Mr. Wilkinson's determination.

All property in this state is subject to taxation unless it is expressly exempted.[1] The specification of permissible exemptions to ad valorem taxation in the Florida Constitution excludes any other exemptions.[2] Section 196.001, Florida Statutes, implements these

constitutional directives. The statute is entitled "Property subject to taxation," and states:

"Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:

(1) All real and personal property in this state and all personal property belonging to persons residing in this state; and

(2) All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state."

In claiming an exemption from taxation, the burden is on the claimant to show clearly any entitlement to tax exemption.[3] The rule is that all property is subject to taxation unless expressly exempted and such exemptions are strictly construed against the party claiming them.[4]

Section 196.198, Florida Statutes, provides the exemption from taxation for educational property. In relevant part, the statute provides:

"Educational institutions within this state and their property used by them or by any other exempt entity or educational institution exclusively for educational purposes shall be exempt from taxation. . . . Property used exclusively for educational purposes shall be deemed owned by an educational institution if the entity owning 100 percent of the educational institution is owned by the identical persons who own the property. . . ."

You ask whether this statutory language would allow the granting of a property tax exemption to the private school property operated by School, LLC, and owned by Land, LLC. While it is clear from your letter that the same two people are the sole members of both School, LLC, and Land, LLC, the statute requires that the entity owning 100 percent of the educational institution, School, LLC, must be owned by the identical persons who own the property, that is Land, LLC.

"Persons" in this context may mean not only individuals but corporations and other business entities. The term "persons" is not defined for use in Chapter 196, Florida Statutes. However, section 1.01, Florida Statutes, provides a general definition of the term "person," as it may be used throughout the statutes (in the absence of a more specific definition), which "includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations."[5] Thus, section 196.198, Florida Statutes, requires the identical business entity to own the educational institution and the property upon which it is located.

In the fact situation you have described, Land, LLC, and School, LLC, are not the identical "person" but are individual, independently incorporated entities. While the same two people are the sole members of both limited liability corporations, the corporations or "persons" are separate and distinct and not "the identical persons" as required by section 196.198, Florida Statutes. Exemptions to taxation statutes are strictly construed against the party claiming them, that is, Mr. and Mrs. Jones, and I cannot conclude, based on the information you have presented, that an educational exemption may be granted under these circumstances.

Thus, it is my opinion that an educational exemption from taxation is not available pursuant to section 196.198, Florida Statutes, where the educational institution is owned by a corporate entity and the real property is owned by a different corporate entity although the same two people are the sole members of both entities.

Sincerely,

Pam Bondi
Attorney General

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[1] *See* Art. VII, ss. 3 and 4, Fla. Const.; s. 196.001, Fla. Stat.; *Colding v. Herzog*, 467 So. 2d 980 (Fla. 1985).

[2] *See* Art. VII, s. 3, Fla. Const.; *Sebring Airport Authority v. McIntyre*, 718 So. 2d 296 (Fla. 2d DCA 1998), *affirmed*, 783 So. 2d 238 (Fla. 2001).

[3] *Volusia County v. Daytona Beach Racing and Recreational Facilities District*, 341 So. 2d 498 at 501 (Fla. 1976), *appeal dismissed*, 98 S.Ct. 32, 434 U.S. 804, 54 L. Ed. 2d 61 (1977).

[4] *See State ex rel. Wedgworth Farms, Inc. v. Thompson*, 101 So. 2d 381 (Fla. 1958); *Volusia County v. Daytona Beach Racing and Recreational Facilities District*, 341 So. 2d 498 (1976), *appeal dismissed*, 98 S.Ct. 32, 434 U.S. 804, 54 L. Ed. 2d 61 (1977); *Williams v. Jones*, 326 So. 2d 425 (1975),*appeal dismissed,* 97 S.Ct 34, 429 U.S. 803, 50 L. Ed. 2d 63 (1976).

[5] *And see* ss. 198.01(3) and 211.01(15), Fla. Stat., both of which define "person" for purposes of taxation statutes and include business entities within those definitions.