

SJC Issues Property Tax Ruling Regarding Religious Organization

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Introduction

In a noteworthy development relevant to property tax exemptions for religious organizations in the Commonwealth, the Supreme Judicial Court issued a ruling on March 22, 2017 in *Shrine of Our Lady of La Salette Inc. v. Board of Assessors of Attleboro*. The case involved the Appellate Tax Board's (ATB) denial of an abatement on 199 acres in Attleboro owned by the Shrine of Our Lady of La Salette Inc. (the Shrine).

The Shrine sought a tax abatement from the board of assessors in Attleboro, claiming that certain portions of its property were exempt from taxation under G. L. c. 59, § 5, Eleventh (Clause Eleventh), the exemption for "houses of religious worship." The crux of the appeal was the scope of the exemption under Clause Eleventh.

The SJC concluded that the Shrine's property is exempt from taxation under Clause Eleventh where the dominant purpose of the questioned portion of property is religious worship or instruction, or purposes connected with it. Applying this principle, the court concluded that the ATB erred when it found that the Shrine's welcome center and maintenance building were not exempt under Clause Eleventh.

However, the court upheld the ATB's denial of an abatement for the former convent that the Shrine leased to a charitable nonprofit organization for use as a safe house for battered women, and for the wildlife sanctuary that was exclusively managed by the Massachusetts Audubon Society in accordance with a conservation easement.¹

In the ruling, the court noted that the safe house and wildlife sanctuary might have been exempt from real estate taxation under G. L. c. 59, § 5, Third (Clause Third), as the property of a benevolent or charitable organization devoted to charitable use, had the Shrine satisfied the filing requirements for such an exemption, which includes filing a Form PC with the Attorney General's Office. However, the SJC determined that the portions of the property occupied by the former convent and the wildlife sanctuary were not exempt under Clause Eleventh because the purposes for which they were used did not sufficiently relate to "religious worship or instruction" as is required under Clause Eleventh.

In light of this ruling, religious organizations in the Commonwealth may want to closely examine the uses to which their property is put. If portions of their property are used on more than an incidental and occasional basis by nonreligious charitable nonprofits (e.g., if such portions are leased to such nonprofits), such portions are vulnerable to being deemed ineligible for the property tax exemption under Clause Eleventh. Religious organizations that are unwilling to make the filings and disclosures required to obtain a property tax exemption under Clause Third, to encompass such leased portions, may want to consider alternative structuring options that would decouple the leased portions of the property from the portions of the property used for religious instruction and worship (e.g., form an affiliated charitable corporation or trust to hold and manage the leased portions of the property).

The Shrine

The Shrine is a Catholic religious organization affiliated with the Missionaries of Our Lady of La Salette (missionaries). The missionaries are members of the Catholic faith who are inspired by what they believe to have been an apparition of the Virgin Mary (Our Lady) to two children in the village of La Salette, France, in 1846. A shrine was erected in La Salette following that event.

Since then, members of the Catholic faith from around the world have erected shrines honoring Our Lady in their respective countries. Although there are a number of these shrines throughout the world, each country is permitted only one designated national shrine. The

Shrine in Attleboro, which opened in 1953, became the national shrine for the United States in 2009. Thousands of people visit the Shrine each year.

The Shrine, organized as a Massachusetts nonprofit corporation, includes the following purposes in its charter:

"To promote the devotion to Our Lady of La Salette through the organization of public pilgrimages and through the administration of the Sacraments of the Church; to provide spiritual guidance to the pilgrims visiting the Shrine; to provide food and housing, if necessary, for the proper care of the pilgrims; to offer to said pilgrims the opportunity of purchasing religious articles and books of all kinds; to seek contributions for the development and support of said Shrine; to use any or all of said funds for the religious education of young men training for religious and missionary priesthood; to provide funds to further foreign missions; and to do such further acts as are necessary and incidental to the carrying out of the purposes hereinbefore set forth."

In keeping with the Shrine's purposes, visitors and pilgrims may participate in a range of activities on the Shrine's property. Each day, the Shrine holds a Mass and provides the opportunity for confession. In addition, it offers specialized prayer services and prayer groups at various times. Each year it also holds a well-known Festival of Lights.

The Property Tax Issue

In 2012, Attleboro's assessors determined that the Shrine owed property taxes in the amount of \$92,292.98, based on a valuation of \$12,815,800, the taxable portion of which was valued at \$4,955,740. The Shrine paid its property tax, with interest, and in January, 2013, filed an application for abatement, which the city's board of assessors (assessors) denied in April, 2013. The Shrine appealed to the ATB, arguing that all of its property was exempt under Clause Eleventh.

The ATB, for purposes of its analysis, divided the Shrine's property into eight distinct portions, three of which it determined to be fully taxable: (1) the maintenance building, (2) the former convent, which was leased to a nonprofit organization that uses the building as a safe house for battered women (safe house), and (3) approximately 110 acres of "unimproved land" known as the Attleboro Springs Wildlife Sanctuary (wildlife sanctuary). The ATB determined that the welcome center and surrounding land was only partially exempt. The Shrine appealed these four determinations.

SJC Analysis

Property in the Commonwealth is taxable unless expressly exempt. Specific exemptions from taxation are enumerated in G. L. c. 59, § 5. Clause Eleventh exempts from taxation:

"[H]ouses of religious worship owned by, or held in trust for the use of, any religious organization, and the pews and furniture and each parsonage so owned . . . for the exclusive benefit of the religious organizations, . . . but such exemption shall not, except as herein provided, extend to any portion of any such house of religious worship appropriated for purposes other than religious worship or instruction. The occasional or incidental use of such property by an organization exempt from taxation under the provisions of [26 U.S.C. § 501(c)(3)] of the Federal Internal Revenue Code shall not be deemed to be an appropriation for purposes other than religious worship or instruction."

The SJC noted that exemption statutes, such as Clause Eleventh, are "strictly construed, and the burden lies with the party seeking an exemption to demonstrate that it qualifies according to the express terms or the necessary implication of a statute providing the exemption." *New England Forestry Found., Inc. v. Assessors of Hawley*, 468 Mass. 138, 148-149 (2014), citing *Milton v. Ladd*, 348 Mass. 762, 765 (1965).

Even so, the court noted that in interpreting the scope of Clause Eleventh, it recognized that a house of religious worship is more than the chapel used for prayer and the classrooms used for religious instruction. It includes the parking lot, anteroom, parish hall, the offices for clergy and staff, and storage areas for extra chairs needed for high holy days. These portions of the property are exempt, even if no religious worship ever occurs within them. It suffices that they are used for purposes that normally accompany and supplement the religious work of a parish.

The Welcome Center and Maintenance Building

The SJC ruled that the ATB defined far too narrowly the scope of the religious exemption in connection with its assessment of the welcome center. The cafeteria, bistro, and gift shop – contained in the welcome center – were all related to religious worship at the Shrine.

Visitors to the Shrine might need to eat and drink during their visit. They also might appreciate the opportunity to obtain religious objects and books at the gift shop that might allow them to continue their religious worship and instruction when they leave. The court observed that the Shrine earned revenue from the cafeteria, bistro, and gift shop did not “remove them from the realm of religious worship and instruction,” wryly noting that “even a church cannot live on prayer alone.”

The court also ruled that it was not appropriate for the welcome center to be taxed “on an apportioned basis” based on the assessor’s estimation of the percentage of nonreligious use of the center. The court noted that the proper approach is to determine the “dominant use” of each portion of the property. The dominant purpose test thus considers, as to each portion of the Shrine’s property, whether or not its dominant purpose is (i) religious worship or instruction or (ii) connected with religious worship or instruction (and is therefore exempt from taxation).

Because the dominant purpose of the welcome center is “connected with” religious worship and instruction, and “accompan[ies] and supplement[s]” the religious work of the Shrine, the SJC concluded that the welcome center should have been entirely exempt under Clause Eleventh.

On similar grounds, the court determined that the dominant purpose of the maintenance building, which stored items for the Festival of Lights held at the Shrine, gift shop inventory, and maintenance vehicles, was connected with the religious worship and instruction offered at the Shrine and therefore ruled that the maintenance building was exempt under Clause Eleventh as well.

Safe House and Wildlife Sanctuary

The Shrine argued that the portion of its property leased to a charitable nonprofit organization and used as a safe house for battered women should have been exempt because it was incidental to the over-all use of the Shrine’s property as a place of religious worship and instruction, and because it furthered the Shrine’s religious mission of performing charitable deeds in the community. The court disagreed for three reasons.

First, the court rejected the Shrine’s assertion that the “dominant purpose” test was an all-or-nothing test regarding the exemption of church property and instead ruled that the assessor was correct in designating certain portions of the Shrine’s property as devoted to non-exempt uses. In support of its position, the court cited the language of Clause Eleventh, which provides that the property tax exemption shall not “extend to *any portion* of any such house of religious worship appropriated for purposes other than religious worship or instruction.” (emphasis added)

Second, the SJC ruled that since the nonprofit’s use of the property was “permanent and exclusive”, rather than “occasional or incidental”, the property was not covered by the Clause Eleventh exemption:

“Where a house of religious worship grants a “permanent and exclusive” lease of a portion of its property to a nonprofit organization to perform a charitable mission, rather than religious worship or instruction, we conclude that this portion of its property was “appropriated for purposes other than religious worship and instruction” under Clause Eleventh.”

The court supported its conclusion by reference to the legislative history of the amendment to Clause Eleventh that broadened the statute to permit such “occasional or incidental use” by a charitable nonprofit. The amendment to Clause Eleventh was first rejected by the governor because it was “too broad” and would have granted tax exemption to the permanent and exclusive non-religious use of church-owned property.

Third, the court noted that the Shrine could have obtained an exemption for the safe house if it had timely filed the documentation required under Clause Third.

For essentially the same reasons and despite the fact that the wildlife sanctuary functioned as a spiritual sanctuary for some, the court affirmed the ATB’s determination that the wildlife sanctuary was fully taxable.

1. The Shrine later transferred the fee interest in the wildlife sanctuary to the Massachusetts Audubon Society, but the Shrine was the owner of record for the fiscal year at issue.

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