

7-1-1967

Ad Valorem Tax Exemption

Calvin David

Follow this and additional works at: <http://repository.law.miami.edu/umlr>

Recommended Citation

Calvin David, *Ad Valorem Tax Exemption*, 21 U. Miami L. Rev. 894 (1967)
Available at: <http://repository.law.miami.edu/umlr/vol21/iss4/11>

This Case Note is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

AD VALOREM TAX EXEMPTION

The plaintiff, a non-profit corporation which operated a home for elderly people, sought an ad valorem tax exemption pursuant to section 16, article XVI of the Florida Constitution.¹ The circuit court concluded that the plaintiff's property was not held and used exclusively for either religious, scientific, municipal, education, literary, or charitable purposes and since it did not qualify as to any of the constitutional exemptions singularly, it did not qualify through a combination of any of the exemptions collectively. On appeal, *held*, affirmed: "Since taxation is the rule and exemption is the exception the Court is not inclined to enlarge by construction, nor implication something that neither the Legislature nor the framers of the Constitution have not written in clear and definite terms." *Presbyterian Homes of the Synod of Fla. v. City of Bradenton*, 190 So.2d 771, 772 (Fla. 1966).

Generally, state constitutions and statutes which provide for exemptions can be grouped under two major headings.² First, where the exemption is bestowed directly upon the institution, and second, where the exemption is conferred upon the property.³

At first glance, Florida's provision⁴ appears to be within the second grouping—the exemption conferred on the land. However, earlier Florida cases have emphasized both the character of the taxpayer under consideration *and* the nature of the use to which the particular property is devoted.⁵

According to a strict interpretation of the "land use" exemption, property is exempt only when the activity for which it is used has an immediate and substantial relation to,⁶ and is held and used for,⁷ one of the purposes stated in the exemption provision. Under Florida's constitutional provision, property is exempted from ad valorem taxation if it

1. FLA. CONST. art. XVI, § 16: "The property of all corporations . . . shall be subject to taxation unless such property be held and used exclusively for religious, scientific, municipal, educational, literary or charitable purposes."

2. 84 C.J.S. *Taxation* § 281 (1954). *See also* Annot., 34 A.L.R. 645 (1925).

3. However, when state statutes are compared with the case law interpreting them, it is evident that some courts have overlooked this distinction in some decisions while giving import to it in others. For this reason it seems futile to try to classify the statutes and constitutions into these clear divisions. Florida cases throughout this note shows typical treatment of the problem referred to above.

4. FLA. CONST. art. XVI, § 16.

5. State *ex rel.* *Burbridge v. St. John*, 143 Fla. 544, 197 So. 131 (1940).

More recent cases seem to draw a clear distinction however. *See* State v. *Inter-American Center Authority*, 84 So.2d 9 (Fla. 1955) (criterion for exemption is the character of use to which property is put and not character of ownership); *Dr. Wm. Howard Hay Foundation v. Wilcox*, 156 Fla. 704, 24 So.2d 237 (1945) (the use made of the property is the sole test of exemption). An earlier case which seems to have made the distinction is *Lummus v. Florida Adirondack School*, 123 Fla. 810, 168 So. 232 (1936).

6. *City of St. Augustine v. Middleton*, 147 Fla. 529, 3 So.2d 153 (1941).

7. *Miami Battlecreek v. Lummus*, 140 Fla. 718, 192 So. 211 (1939).

is used exclusively for charitable purposes.⁸ The sole test to determine whether there is to be an exemption should be the use made of the property⁹ and the characterization of the owner as a charitable institution should be immaterial.¹⁰

In applying existing Florida law¹¹ to the instant case the supreme court strictly interpreted the constitutional provision¹² by adopting in toto the circuit court's conclusion that the property was not held and used exclusively for any of the categories specified in the provision, and was therefore not exempt from taxation.¹³ The dissent said that such a simply and clearly stated majority holding would endanger "the tax exempt status of every church-operated college, school or hospital in the state which make any charges for services."¹⁴ However, the existing case law in Florida does not substantiate this fear. The court has said that a charitable institution does not lose its charitable character nor its exemption from taxation *merely* because the recipients of its benefits who are able to pay are required to do so, so long as the funds so derived are devoted to the charitable purposes of the institution.¹⁵ There is no reason to believe that this will not be the case in the future.¹⁶

The instant case partially satisfies the need for definitions in this area of great public importance.

The theory upon which property of charitable institutions is exempted from taxation is that their chief object is to care for those who would otherwise become charges upon the state or burdens upon society.¹⁷ This is the theory upon which exemption has always been based¹⁸ and coincides with the constitutional provision requiring a uniform and equal rate of taxation.¹⁹

CALVIN DAVID

8. FLA. CONST. art. XVI, § 16.

9. *State v. Inter-American Center Authority*, 84 So.2d 9 (Fla. 1955); *Dr. Wm. Howard Hay Foundation v. Wilcox*, 156 Fla. 704, 24 So.2d 237 (1945). (The use made of the property is the sole test).

Florida treats the question of whether property is used exclusively for charitable purposes as one of fact. *State ex rel. Miller v. Doss*, 146 Fla. 752, 2 So.2d 303 (1941).

10. 84 C.J.S. *Taxation* § 282 (1954).

11. *Haines v. St. Petersburg Methodist Home*, 173 So.2d 176 (Fla. 2d Dist. 1965).

12. FLA. CONST. art. XVI, § 16.

13. *Presbyterian Homes of the Synod of Florida, Inc. v. City of Bradenton*, 190 So.2d 771, 772 (Fla. 1966).

14. *Id.* at 773.

15. The majority is no doubt correct that "a charitable institution does not lose its charitable character and its consequent exemption from taxation merely because recipients of its benefits able to pay are required to do so . . ." *Orange County v. Orlando Osteopathic Hosp.*, 66 So.2d 285, 288 (Fla. 1953).

16. In the instant case it was found as a matter of fact that the property was not used for charitable purposes. No doubt one of the ingredients of this finding was the payment of the money. However, other facts were also present and it is certainly conceivable that an opposite finding would result if any one of the factors present here does exist.

17. *Supra* note 2.

18. *Supra* note 2.

19. FLA. CONST. art. IX, § 1, provides for a uniform and equal rate of taxation except as to such property as may be exempt by law for charitable purposes, among others.