

NORTH CAROLINA
WAKE COUNTY

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
98 PTC 168

IN THE MATTER:
THE APPEAL OF **MORNINGSTAR
PUBLICATIONS, INC.** from the
decision of the Wilkes County Board of
Equalization and Review concerning
exemption of six parcels of real property
for the tax year 1998.

FINAL DECISION

This Matter came on for hearing before the North Carolina Property Tax Commission (hereinafter "Commission"), sitting as the State Board of Equalization and Review at its regularly scheduled Sessions of Hearings in the City of Raleigh, Wake County, North Carolina on February 23, 2000 and on March 23, 2000, pursuant to the appeal of Morningstar Publications, Inc. (hereinafter "Taxpayer") from the decision of the Wilkes County Board of Equalization and Review (hereinafter "County Board") concerning property tax exemption of six parcels of real property owned by the Taxpayer for the tax year 1998 as well as an airplane and miscellaneous personal property.

Chairman Terry L. Wheeler presided over the hearing with Vice Chair Juleigh Sitton and Commission members R. Bruce Cope, Linda M. Absher and Wade F. Wilmoth participating.

Tom Bush and David Thurman, attorneys at law represented the Taxpayer at the hearing; Charles Meeker and Anthony Triplett, attorneys at law represented Wilkes County at the hearing.

STATEMENT OF THE CASE

The Taxpayer submitted two applications for property tax exemptions for tax year 1998 concerning six parcels of real property, an airplane and certain personal property, including studio recording equipment. After the Wilkes County Tax Administrator denied the applications for exemption, the Taxpayer filed an appeal with the County Board challenging the Administrator's denial. By notice of decision dated June 12, 1998, the County Board sustained the Tax Administrator's denial of the exemptions. On July 9, 1998, the Taxpayer, through counsel, filed a timely appeal with the Property Tax Commission and requested a full hearing on this matter pursuant to G.S. § 105-290.

STATEMENT OF THE FACTS

The Taxpayer, Morningstar Publications, Inc., is a Mississippi corporation domesticated to do business in the State of North Carolina. The Taxpayer owns six parcels of real property in Wilkes County; two of these parcels have residences on them. One of the residences has a recording studio attached to it. The parcel on which the other residence was located had a duplex under construction as of January 1, 1998. The duplex is used, among other matters, as an office. The Taxpayer also owns a CESSNA 414 airplane. Finally, the Taxpayer seeks property tax exemption for certain personal property, including recording studio equipment even though another individual owns the recording studio equipment.

The Taxpayer, through counsel, contends that it is a multi-faceted religious body and teaching ministry consisting of church congregations, a School of Ministry, an audio and tape ministry, and books, and leads in a new technique in evangelical training, which is training through conferences. The Taxpayer further contends that it is a non-profit organization, which has numerous ministries associated with it and part of it. The Taxpayer also states that it has a number of local congregations in its Association of Churches throughout the United States. Finally, the Taxpayer asserts that its six parcels of real property and its business personal property, including the CESSNA 414 aircraft, located in Wilkes County, should be exempt from ad valorem taxation pursuant to G.S. §§ 105-278.3 and -278.5.

Wilkes County, through counsel, contends that the Taxpayer's primary activity is to publish and to sell books, music and tapes and is not an entity that is entitled to property tax exemption. The County also contends that four of the six parcels are vacant and are not necessary for the convenient use of the nearby residences. Wilkes County further contends that the subject properties are not wholly and exclusively used for religious purposes, as defined in G.S. § 105-278.3, because of the commercial activities associated therewith. Wilkes County thus asserts that the subject properties are not exempt from ad valorem taxation and requests the Commission to affirm the Order of the County Board denying exemption.

ISSUES

In the Order on Final Pre-Hearing Conference, the parties presented similar issues, although they were phrased somewhat differently. The issues considered by the Commission were:

1. Does a local unit of a church, an association of churches, a religious educational assembly or similar units or organizations own the six properties, for which exemption is sought?

2. Are the six properties, (a) buildings, (b) land that the buildings occupy, or (c) adjacent land, reasonably necessary for convenient use of the buildings?

3. Are the six properties, for which exemption is sought, used wholly and exclusively for religious purposes or for purposes of instruction in religious education?

4. Is the personal property, including the aircraft, for which exemption is sought, owned by an exempt organization and used wholly and exclusively for religious purposes?

EVIDENCE

The Commission received the following evidence:

1. Taxpayer Exhibit 1 - Certificate of Authority of Foreign Corporation - Morningstar Publications, Inc.
2. Taxpayer Exhibit 2 - Ministry Information Brochure.
3. Taxpayer Exhibit 3 - Ministry Information Sheet.
4. Taxpayer Exhibit 4 - Internal revenue Tax Exemption Letter.
5. Taxpayer Exhibit 5 - North Carolina Department of Revenue Tax Exemption Letter.
6. Taxpayer Exhibit 6 - Mecklenburg County Tax Exemption Letter.
7. Taxpayer Exhibit 7 - Brunswick County Property Tax Listing.
8. Taxpayer Exhibit 8 - Certificate of Ordination-Richard Owen Joyner.
9. Taxpayer Exhibit 9 - Certificate of Ordination-Don Potter.
10. Taxpayer Exhibit 10 - Moravian Falls Project Bulletin.
11. Taxpayer Exhibit 11 - 1996 Year-End Report.
12. Taxpayer Exhibit 12 - 1997 Year-End Report.

13. Taxpayer Exhibit 13 - 1998 Year-End Report (pp. 11-13 January, 1999 Prophetic Bulletin).
14. Taxpayer Exhibit 14 - 1999 Year-End Report.
15. Taxpayer Exhibit 15 - Comparative Income Statement-1998 and prior year.
16. Taxpayer Exhibit 16 - Comparative Balance Sheet-1998 and prior year.
17. Taxpayer Exhibit 17 - Travel Itinerary-Richard Joyner.
18. Taxpayer Exhibit 18 - Airplane Log.
19. Taxpayer Exhibit 19 - Conference Listings and Bulletins-1997-1998.
20. Taxpayer Exhibit 20 - Photographs of Wilkes County Properties.
21. Taxpayer Exhibit 21 - Publications RE: Moravian Falls Project.
22. Taxpayer Exhibit 22 - Rosters of Morningstar Fellowship of Ministries and Fellowship of Churches.
23. Taxpayer Exhibit 23 - Morningstar School of Ministry Student Enrollment for 1997-2000 School Year.
24. Taxpayer Exhibit 24 - Guest Log of Apple Hill Lodge (1995-1999) (Large Document).
25. Taxpayer Exhibit 25 - Statement of Donated Items- (1998 and 1999).
26. Taxpayer Exhibit 26 - Detail of Donated Items (1998).
27. Taxpayer Exhibit 27 - Missions Support List as of January 1998.
28. Taxpayer Exhibit A – Publication materials, such as videotapes, audiotapes and books, offered for illustrative purposes only.

29. Taxpayer Exhibit 28 - Oral Testimony of Steven W. Thompson, Moravian Falls, North Carolina. Mr. Thompson is Executive Vice President of the Taxpayer.
30. Taxpayer Exhibit 29 - Oral Testimony of Richard Joyner, Moravian Falls, North Carolina. Mr. Joyner is President of the Taxpayer.
31. Taxpayer Exhibit 30 - Oral Testimony of William Taylor, Charlotte, North Carolina. Mr. Taylor is Treasurer of the Taxpayer.

The following exhibits of Wilkes County were identified during cross-examination of the Taxpayer's witnesses:

1. County Exhibit 3 - Summary of properties for which Morningstar Publications, Inc. seeks exemption.
2. County Exhibit 4 - Certificate of Authority of Morningstar Publications, Inc.
3. County Exhibit 5 - List of officers of Morningstar Publications, Inc.
4. County Exhibit 6 - Website home page about Morningstar Publications, Inc.
5. County Exhibit 7 - Questions and answers from website.
6. County Exhibit 8 - Brief on the operations of Morningstar Publications, Inc.
7. County Exhibit 9 - 1998 income statement of Morningstar Publications, Inc.
8. County Exhibit 10 - Flight log of CESSNA airplane for 1997-98.
9. County Exhibit 16 - Sample of books and journals sold by Morningstar Publications, Inc.

COMMISSION EXHIBITS

In addition to the evidence presented by the parties, the Commission considered all pleadings, procedural documents, including, but not limited:

1. Commission Exhibit 1 - Notice of Appeal filed July 13, 1998.
2. Commission Exhibit 2 - Commission acknowledgment of Commission Exhibit 1, dated July 14, 1998.
3. Commission Exhibit 3 - Letter from Commission Secretary to Taxpayer's attorney, dated August 14, 1998.
4. Commission Exhibit 4 - Transmittal letter and Application for Hearing, filed September 9, 1998.
5. Commission Exhibit 5 - Commission acknowledgment of Commission Exhibit 4, dated September 10, 1998.
6. Commission Exhibit 6 - Notice of Appearance from Charles C. Meeker as attorney for Wilkes County, filed March 16, 1999.
7. Commission Exhibit 7 - Commission acknowledgment of Commission Exhibit 6, dated March 19, 1999.
8. Commission Exhibit 8 - Faxed letter from Wilkes County attorney to Taxpayer's attorney, dated August 18, 1999.
9. Commission Exhibit 9 - Proposed hearing calendar for February session of the Property Tax Commission, dated January 6, 2000.
10. Commission Exhibit 10 - Notice of Hearing (Taxpayer), dated February 3, 2000.
11. Commission Exhibit 11 - Notice of Hearing (County), dated February 3, 2000.
12. Commission Exhibit 12 - Notice of Appearance Tom Bush as co-counsel for Taxpayer, filed February 16, 2000.
13. Commission Exhibit 13 - Letter from Attorney for Wilkes County to Commission Secretary, filed February 14, 2000.
14. Commission Exhibit 14 - Commission acknowledgment of Commission Exhibit 12, dated February 18, 2000.

15. Commission Exhibit 15 - Notice of change in time of hearing, dated February 17, 2000.

At the conclusion of the Taxpayer's evidence, Wilkes County moved to dismiss the Taxpayer's appeal because the Taxpayer had not carried its burden of showing that the requirements for property tax exemption were met. After considering the Taxpayer's evidence and the authorities cited, the Commission dismissed the Taxpayer's appeal based upon the following findings of fact and conclusions of law.

BASED ON THE EVIDENCE PRESENTED, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The property under appeal consists, in part, of six parcels of real property, four of which are vacant and do not have permanent structures on them. Residences occupy the other two parcels. One residence serves as the home for Don Potter. This residence includes a recording studio, in which Mr. Potter mixes and edits music for audiotapes and disks. The other residence is the home of Richard Joyner and as of January 1, 1998, a duplex was in the process of construction on this parcel. Mr. Joyner uses his residence and office for corporate purposes, including writing books and articles, which are subsequently published. The Taxpayer provides these residences to Mr. Potter and Mr. Joyner as part of their compensation. The business personal property subject to this appeal includes a CESSNA 414 airplane and miscellaneous items, including office equipment and recording studio equipment. The recording studio equipment is not owned by the Taxpayer, but is owned individually by Mr. Potter.

2. The Taxpayer is a Mississippi corporation, domesticated to do business in the State of North Carolina. The stated purposes of the Taxpayer, as set forth in its Certificate of Authority and Bylaws, include the publishing of literature, music, materials and other items with an orientation toward Christian religion. The books are best sellers, which are distributed by a wholesaler and sold by retail stores and mail order. The Taxpayer's products are advertised to the general public. The titles of the books published include a variety of subjects.

3. Over one-half of Taxpayer's revenues came from the sale of books, tapes, music and subscriptions during the calendar years of 1997 and 1998. These sales exceed \$2.5 million each year. The net income of Taxpayer exceeded \$590,000 each year. A significant amount of additional revenues comes from fees paid by individuals who attended conferences.

4. There was no structure for the purpose of worship on the six parcels in question as of January 1, 1998. Indeed, as of January 1, 1998, the Taxpayer did not own or operate a place of worship in Wilkes County. While the Taxpayer did lease a church facility in Mecklenburg County, that facility is not located within the vicinity of the six parcels and is many miles from Wilkes County.

5. As of January 1, 1998, the Taxpayer had not placed any retreat building on the six parcels in question, nor had it started construction of any such building.

6. The four parcels, which are vacant, are large in size and are not necessary for the convenient use of the two residences. The two residences have sufficient land around them, 6.3 acres and 17.2 acres respectively, for their current use.

7. The recording studio and office space have been and are used for purposes associated with the production of books, tapes, music and subscriptions which are then sold. That is, the studio is used for mixing and editing various items, and the office is used for writing as well as administrative purposes.

8. The CESSNA 414 aircraft is owned by the Taxpayer and is used for a variety of purposes, including publishing company trips and vacation travel by Mr. Joyner. Mr. Joyner is the pilot who exclusively flies the aircraft.

BASED ON THE FOREGOING FINDINGS OF FACT, THE NORTH CAROLINA PROPERTY TAX COMMISSION CONCLUDES AS A MATTER OF LAW:

1. The Commission has jurisdiction to hear this appeal and to determine whether the exemption from ad valorem taxation was properly denied.

2. Pursuant to G.S. §§ 105-278.3 and -278.5 real and personal property may be exempted from ad valorem taxation provided the requirements of these statutes are met. North Carolina caselaw provides that statutes exempting specific property from taxation, because of the purposes for which the property is used, should be construed against exemption in favor of taxation. This means that everything should be excluded from the statute's operation, which does not come within the scope of the language used. See In Re Appeal of Worley, 93 N.C. App. 191, 195 (1989).

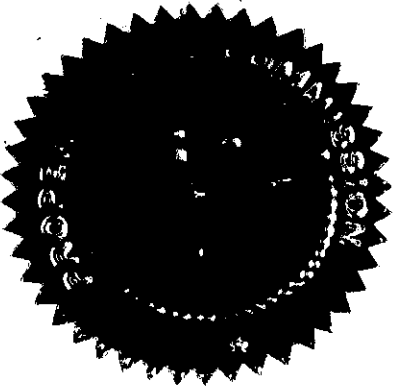
3. Taxpayer bears the burden to prove that the property is entitled to exemption. This burden is substantial and difficult to meet because all property is subject to taxation unless exempted by a statute of statewide origin. See In Re Southeastern Baptist Theological Seminary, No. COA98-1440 (October, 1999). Also, North Carolina is a "present use" state. Because no public purpose is served by land permitted to lie unused and untaxed, present use, not intended use, controls. See Worley, supra, 195.

4. The six parcels of real property and most of the business personal property is owned by an entity whose primary activity is the publishing and sale of books, tapes and disks. As such, the Taxpayer has not shown that it met the statutory requirement of being a local unit of a church, an association of churches, a religious educational assembly or similar unit or organization.

5. Four of the six parcels are vacant and not necessary for the convenient use of the residences. As such, the Taxpayer has not shown that these parcels met the statutory requirement of being buildings, land which the buildings occupy or adjacent land reasonably necessary for convenient use of the buildings.

6. The Taxpayer has not shown that its use of the real property and personal property in question was not wholly and exclusively for religious purposes. A majority of Taxpayer's activities are commercial in nature. A business cannot compete for profit and then seek to insulate itself from taxation by claiming that its profits are used to attain a religious purpose. See Sunday School Board of The Southern Baptist Convention v. Mitchell, 658 S.W.2d 1, 15 (MO 1983) and Moravian Fundamental Church Council v. Board of Equalization, 183 N.W.2d 750, 753 (Neb. 1971). Likewise, these properties are not wholly and exclusively for purposes of instruction in religious education. The recording studio, office and airplane are used as part of the Taxpayer's publishing business and thus are not used wholly and exclusively for religious or instructional purposes. Likewise, the recording studio equipment owned by Mr. Potter is part of the commercial activity.

THE COMMISSION NOW, THEREFORE, ORDERS, ADJUDGES AND DECREES that the decision of the Wilkes County Board of Equalization and Review, dated June 12, 1998, which denied property tax exemption of the subject property is hereby **AFFIRMED** and that the Taxpayer's appeal to this Commission is dismissed.



NORTH CAROLINA PROPERTY TAX COMMISSION

A handwritten signature in black ink, appearing to read "T. Wheeler", written over a horizontal line.

Terry L. Wheeler, Chairman

Vice Chair Sitton and Commissioners member Cope, Absher and Wilmoth concur.

Entered: May 11, 2000

ATTEST:

A handwritten signature in black ink, appearing to read "Janet L. Shires", written over a horizontal line.

Janet L. Shires, Secretary

No. COA00-1242

North Carolina Court of Appeals

IN THE MATTER:

THE APPEAL OF MORNINGSTAR PUBLICATIONS, INC. from the decision of the Wilkes County Board of Equalization and Review concerning exemption of six parcels of real property for the tax year 1998

From Property Tax Commission

(98P) IN THE OFFICE OF CLERK COURT OF APPEALS OF NORTH CAROLINA

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FILED

ORDER

The following order was entered:

The motion filed in this cause on the 31st day of January 2001 and designated "Unopposed Motion To Dismiss Appeal" is allowed. Appeal dismissed. Appellant to pay costs.

And it is considered and adjudged further, that the Appellant, Morningstar Publications, Inc., do pay the costs of the appeal in this Court incurred, to wit, the sum of Nine Dollars and 00/100 (\$9.00), and execution issue therefor.

By order of the Court this the 2nd day of February 2001.

The above order is therefore certified to the Secretary of the Property Tax Comm Property Tax Commission.

Witness my hand and official seal this the 2nd day of February 2001.

John H. Connell
Clerk of North Carolina Court of Appeals

- CSC Orig
- cc:
- Mr. Charles H. Mercer, Jr.
- Mr. W. David Thurman
- Mr. Thomas Bush
- Mr. Charles C. Meeker
- Mr. Jason J. Kaus
- Mr. Anthony R. Triplett