

NO. 9010PTC858

NORTH CAROLINA COURT OF APPEALS

Filed: 16 April 1991

IN THE MATTER OF:

THE APPEAL OF THE CHURCH OF
THE CREATOR FROM THE DENIAL
OF ITS CLAIM FOR EXEMPTION
BY THE MACON COUNTY BOARD
OF EQUALIZATION AND REVIEW
FOR 1989

From the North Carolina
Property Tax Commission

Appeal by respondent Macon County from the final decision of the Property Tax Commission entered 22 December 1989. Heard in the Court of Appeals 12 March 1991.

Petitioner Church of the Creator owns a building and certain property in Macon County. In 1984, the Macon County Tax Office granted a property tax exemption for the church building and land pursuant to N.C. Gen. Stat. §105-278.3 (real and personal property used for religious purposes).

During the summer of 1988, Macon County's Tax Assessor went on inspection visits of additions to the residence of the church's "pontifex maximus," which adjoins the exempted property. He saw what appeared to him to be indications of lack of use of the church building and lack of maintenance on the land. By letter dated 14 February 1989, the assessor informed petitioner:

It appears that your property does not meet the requirements any longer. After visiting your place several times doing [sic] this past year, it seems that the place is not being used for any type of activity. Also, your organization has never completed an application for tax exemption. You have also

failed to submit a copy of your incorporation papers, by-laws, and charter.

Our office has no choice but to take you out of tax exempt status. You have thirty days from the date of this letter to comply with the requirements or to appeal, or this notice is final.

The petitioner did not respond as requested, but did challenge the authority of the assessor to do what he had done, and pointed out that it had properly applied for and been granted an exemption. The revocation of exempt status was then finalized, and petitioner appealed to the Macon County Board of Equalization and Review, which affirmed this decision.

Petitioner then appealed to the North Carolina Property Tax Commission. The Commission concluded that the assessor had exceeded his authority and failed to employ a lawful procedure in revoking petitioner's tax exempt status. It further concluded that since the action was before the Macon County Board of Equalization and Review solely as an appeal from this improper procedure, the Board lacked the authority to remove the previously granted exemption. Respondent appeals.

William D. Harazin for petitioner-appellee.

McMurray, McMurray & Alexander, by John W. Alexander, for respondent-appellant.

WELLS, Judge.

Our review is governed by N.C. Gen. Stat. §105-345.2, which states that a final decision of the Property Tax Commission may be reversed or modified if appellant's substantial rights have been prejudiced because the Commission's findings, conclusions, inferences, or decisions are:

- (1) In violation of constitutional provisions;
or
- (2) In excess of statutory authority or jurisdiction of the Commission; or
- (3) Made upon unlawful proceedings; or
- (4) Affected by other errors of law; or
- (5) Unsupported by competent, material and substantial evidence in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

We have reviewed the record and respondent's assignments of error and view the dispositive question presented by this appeal to be whether the Commission correctly held that the procedures used by respondent in revoking petitioner's tax exempt status violated the North Carolina Machinery Act (N.C. Gen. Stat. §105-271 et seq). We affirm.

Every owner of property seeking exemption from property taxes under provisions of the Act has the burden of establishing entitlement to such an exemption. N.C. Gen. Stat. §105-282.1. The owner must file an application for exemption each year during the listing period. Id. This period begins on the first business day in January and extends through the end of the month, unless extended by the Board of County Commissioners. N.C. Gen. Stat. §105-307. The Act excuses certain classes of taxpayers from this annual filing requirement, creating, in effect, a continuing exemption. The provision relevant here is N.C. Gen. Stat. §105-282.1 (a)(3):

After an owner of property entitled to exemption under ...105-278.3...has applied for exemption and the exemption has been approved, such owner shall not be required to file applications in subsequent years except in the following circumstances:

a. New or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or

b. There is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption.

Respondent's assessor purported to remove petitioner from tax exempt status on 14 February 1989, and gave it 30 days to correct its alleged deficiencies or appeal. The Commission held that there is no authority in the Act for such an action. We agree. A county assessor has the power to challenge an exemption once granted by requiring the taxpayer to file a new application if he or she perceives that one of the changes in the property listed in the statute has occurred. Under the plain language of the statute, the application for exemption must be made during the listing period. The Commission reasoned that the county therefore is required to notify the taxpayer before the listing period that such an application will be required for the coming tax year. This did not take place in this case.

While the interpretation given a statute by the agency charged with its administration is not controlling, it is entitled to great consideration. *State Utilities Commission v. The Public Staff-North Carolina Utilities Commission*, 309 N.C. 195, 306 S.E.2d 435 (1984). In this case, the Commission has interpreted the statute in a reasonable way so as to protect the

rights of counties to challenge continuing exemptions without doing damage to any of the Act's provisions. Respondent has failed to show that its substantial rights have been prejudiced in any of the ways set out in N.C. Gen. Stat. §105-345.2. The decision of the Commission is therefore

Affirmed.

Judge GREENE concurs.

Judge WYNN dissents.

A TRUE COPY
CLERK OF THE COURT OF APPEALS
OF NORTH CAROLINA
Barbara P. Larkin
CLERK
May 6 1991