

NORTH CAROLINA
WAKE COUNTY

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
00 PTC 304

IN THE MATTER:
THE APPEAL OF **UNIVERSITY
FOR THE STUDY OF HUMAN
GOODNESS AND CREATIVE
GROUP WORK** from the decision
of the Forsyth County Board of
Equalization and Review concerning
exemption of certain real property
for the 2000 tax year.

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 Session of Hearings in the City of Raleigh, Wake County, North Carolina on December 5 and 6, 2001, pursuant to the appeal of University for the Study of Human Goodness and Creative Group Work (hereinafter "Taxpayer" or "University") from the decision of the Forsyth County Board of Equalization and Review (hereinafter "County Board") concerning exemption of certain real property owned by the Taxpayer for the 2000 tax year.

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

W. Thomas White, Attorney at Law, represented the Taxpayer at the hearing; B. Gordon Watkins, III, Assistant County Attorney, represented Forsyth County.

STATEMENT OF THE CASE

The Taxpayer submitted an application for property tax exemption for tax year 2000 concerning certain real property located at 1370 Peters Creek Parkway, Winston-Salem, Forsyth County, North Carolina. After the Forsyth County Tax Administrator (hereinafter "Tax Administrator") denied the application for exemption, the Taxpayer filed an appeal with the County Board challenging the Tax Administrator's denial. By notice of decision, dated September 28, 2000, the County Board sustained the Tax Administrator's denial of the exemption. On September 30, 2000 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, University for the Study of Human Goodness and Creative Group Work, is incorporated as a non-profit corporation under the laws of North Carolina. The Taxpayer is the record owner of a commercial lot and building in Forsyth County. Prior to the Taxpayer's purchase of the property in 1998, the subject property was formerly a Red Lobster Restaurant.

The Taxpayer, through counsel, contends that the subject property, which is known as the California Fresh Buffet, is a training laboratory for students enrolled at the University to learn techniques in human goodness, by training the students to serve others. The Taxpayer contends that the subject property is exempt because it is a non-profit organization, which is an outgrowth from the Human Service Alliance. Thus, the Taxpayer argues that the subject property is exempt from ad valorem taxation pursuant to G.S. 105-278.4 because the property is used for an educational purpose.

Forsyth County, through counsel, contends that on January 1, 2000, the California Fresh Buffet was not open for business, but was under renovation for future use as a restaurant. Forsyth County further contends that the California Fresh Buffet is a restaurant and is not entitled to exemption from ad valorem taxation under the Machinery Act. Thus, Forsyth County asserts that the subject property is not exempt from ad valorem taxation under G.S. 105-278.4 and requests the Commission to affirm the decision of the County Board denying exemption.

ISSUE

In the Order on Final Pre-Hearing Conference, the parties did not agree on the issues to be presented to the Commission. The issue considered by the Commission is stated as follows:

1. Is the Taxpayer's property used for an educational purpose and entitled to exemption from ad valorem taxation pursuant to G.S. 105-278.4?

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

1. The property under appeal is a commercial lot and building located at 1370 Peters Creek Parkway, Winston-Salem, Forsyth County, North Carolina. The Taxpayer, University for the Study of Human Goodness and Creative Group Work owns the subject property.

2. The Taxpayer, University for the Study of Human Goodness and Creative Group Work, is incorporated as a non-profit corporation under the laws of North Carolina.

3. As of the valuation date of January 1, 2000, the subject property was under renovation for use as a restaurant. On February 21, 2000, the California Fresh Buffet opened for business serving lunch and dinner to the general public at the subject property.

4. Students enrolled at the University work at the California Fresh Buffet restaurant an average of 40 hours per week. At the present time, the students do not receive formal grades, they do not earn degrees and the University is not accredited by any organization. Upon completion of the program, a student receives a certificate.

5. As of January 1, 2000, the University for the Study of Human Goodness and Creative Group Work did not have any full-time students and did not operate under the semester system.

6. The subject property, the California Fresh Buffet, is located approximately six (6) miles from the housing and classroom facilities of the University for the Study of Human Goodness and Creative Group Work.

7. The subject property, the California Fresh Buffet, is open daily, serving dinner on Monday through Saturday and lunch on Sunday to the general public. The Taxpayer is charging its customers a competitive rate with other restaurants located within the area.

8. The operation of a restaurant is not a use that qualifies under the statutes of North Carolina as an educational purpose.

9. The Taxpayer, University for the Study of Human Goodness and Creative Group Work did not show that the subject property is wholly and exclusively used for an educational purpose.

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. 105-278.4 real and personal property may be exempted from ad valorem taxation provided the requirements of the statute are met. North Carolina requires 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. It is the Taxpayer's burden to prove that 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, Inc. 135 N.C. App. 247, 520 S.E.2d 302 (1999).

4. The subject property is used by the Taxpayer as a restaurant that serves the general public. As such, the Taxpayer has not shown that subject property meets the statutory requirement of being wholly and exclusively used for an educational purpose.

5. The Taxpayer has failed to prove that its use of the subject property in question was wholly and exclusively for an educational purpose.

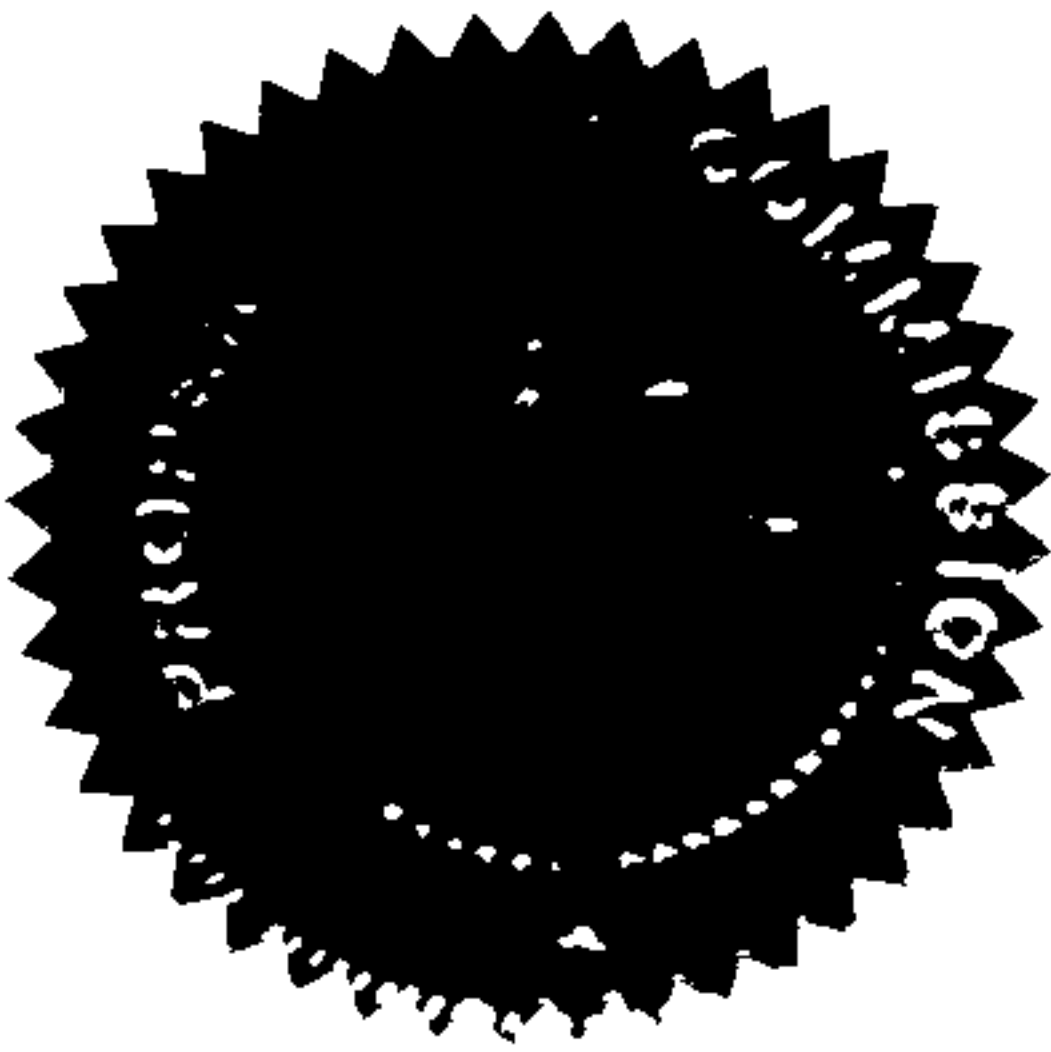
6. The subject property, the California Fresh Buffet, is not of a kind commonly employed in or naturally and properly incident to the operation of an educational institution.

7. The subject property is not used for an educational purpose and is not entitled to exemption pursuant to G.S. 105-278.4.

8. The Taxpayer's exemption requests for the subject property must be denied under the North Carolina General Statutes.

THE COMMISSION NOW, THEREFORE, ORDERS, ADJUDGES AND DECREES that the decision of the Forsyth County Board of Equalization and Review denying property tax exemption to the subject property is hereby **AFFIRMED**.

NORTH CAROLINA PROPERTY TAX COMMISSION



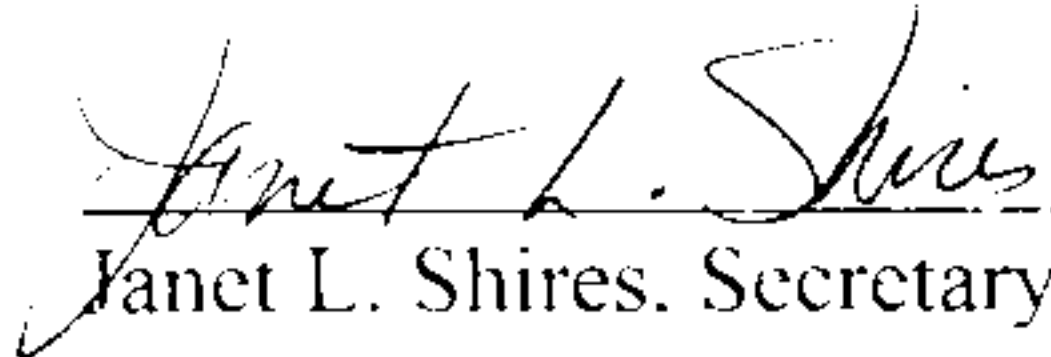


Terry L. Wheeler, Chairman

Vice Chairman Cope and Commission members Absher and Wilmoth concur. Commission member Raynor did not participate in the hearing or deliberation of this matter.

Entered: January 16, 2002

ATTEST:


Janet L. Shires, Secretary