

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

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

89 PTC 61

In the matter of: )  
The appeal of Church of )  
the Creator, Inc. from )  
the decision of the )  
Macon County Board of )  
Equalization and Review )  
for 1989. )

FINAL DECISION

This matter was heard before the Property Tax Commission, sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina, on 21 September 1989, pursuant to the appeal of Church of the Creator, Inc. (hereinafter "Appellant") from the decision of the Macon County Board of Equalization and Review for 1989.

STATEMENT OF CASE

The property under appeal consists of a 1.19 acre lot improved with a two-story structure and appraised by Macon County at a total value of \$187,520 - \$6,930 for the land and \$180,590 for the improvement. The parcel is identified in the County tax records as parcel number 07-02424. On 14 February 1989, the Appellant was notified by the Macon County Assessor of the Assessor's decision to remove a tax exemption previously granted to the subject property pursuant to G.S. 105-272.3. The Appellant appealed the Assessor's decision to the Macon County Board of Equalization and Review for 1989, which affirmed the position taken by the Assessor.

The Appellant contends that the Assessor denied the exemption without cause and that the reason for the denial was the narrow minded and biased attitude of the Assessor toward the Appellant. In the

opinion of the Appellant, the Assessor's decision was arbitrary and capricious, and in violation of the requirements of law. The Appellant asserts that the property should continue to receive an exemption from property taxes pursuant to G.S. 105-278.3.

The County maintains that a review of the use of the property and of related documents reveals that the property is not being used for a religious purpose as defined in G.S. 105-278.3(d)(1), nor is the property entitled to exemption under any other provision of the relevant statutes. The County further contends that despite repeated requests, the Appellant has refused to provide additional information or documentation to support the exemption claimed. The Appellant's refusal to supply additional information, the County contends, left the County with no choice but to render its decision based on the information available. The County requests that the denial of the exemption by the Macon County Board of Equalization and Review be affirmed.

Macon County was represented at the hearing before the Commission by John W. Alexander, attorney at law. The Appellant was represented at the hearing by William D. Harazin, Don Hart, and Mary T. Kloeckner, attorneys at law.

#### ISSUE

The parties did not file an order on final pre-hearing conference with the Commission, nor did the parties agree on the issue or issues to be decided by the Commission in this appeal. The Commission finds that the issue to be decided is whether Macon County employed a proper procedure in removing the property from tax exempt status for the tax year 1989.

EVIDENCE

The evidence presented by the Appellant and considered by the Commission consisted of the following:

1. Taxpayer Exhibit 1 - Letter from Richard Lightner, Macon County Assessor, to Church of the Creator, Inc., dated 14 February 1989.
2. Taxpayer Exhibit 2 - Letter from Macon County Tax Supervisor to Mr. Ben Klassen, dated 24 February 1984.
3. Taxpayer Exhibit 3 - Articles of Incorporation of Church of the Creator, Inc., dated 14 December 1981.
4. Oral testimony of Mr. Richard Lightner, Macon County Assessor.
5. Oral testimony of Mr. Ben Klassen.

The evidence presented by the County and considered by the Commission consisted of the following:

1. Oral testimony of Mr. Allen Wayne Reynolds.

In addition to the evidence presented by the parties, the Commission also considered the following Commission Exhibits:

- C-1 Appellant's notice of appeal, filed 3 May 1989.
- C-2 Commission acknowledgment of C-1, 5 May 1989.
- C-3 Preliminary notice of hearing, 10 July 1989.
- C-4 Official notice of hearing (Appellant), 9 August 1989.
- C-5 Official notice of hearing (County), 9 August 1989.
- C-6 Letter from John Alexander to Commission Counsel, 14 August 1989.
- C-7 Letter from John Alexander to Mr. Klassen, copy to Commission, 15 August 1989.

- C-8 Notice of Deposition to Henri Etta Klassen, 16 August 1989.
- C-9 Notice of Deposition to Ben Klassen, 16 August 1989.
- C-10 Transmittal letter from John Alexander to Commission Counsel for C-8 and C-9, 17 August 1989.
- C-11 Motion to Continue (Appellant), filed 30 August 1989.
- C-12 Order allowing motion to continue, entered 1 September 1989 for 30 August 1989.
- C-13 Transmittal letter and motion for dismissal and other sanctions, filed 19 September 1989.
- C-14 Hearing Memorandum (County), filed 23 October 1989.
- C-15 Transmittal letter for C-14, dated 20 October 1989.
- C-16 Hearing Memorandum (Appellant), filed 23 October 1989.
- C-17 Transmittal letter for C-16, dated 23 October 1989.

#### FINDINGS OF FACT

The facts outlined in the Statement of Case are hereby made a part of this section by reference. After carefully considering all of the evidence of record, as set forth above, the Commission makes the following additional findings of fact:

1. Pursuant to G.S. 105-278.3, the property under appeal was granted an exemption from ad valorem taxation in Macon County for the tax year 1984. The exemption was granted by the then Tax Supervisor of Macon County, Mr. Jim Shope; see Taxpayer Exhibit 2. Pursuant to G.S. 105-282.1(a)(3), the Appellant was not required to make an annual application for exemption in subsequent years except under certain conditions specified therein.

2. Macon County did not question the exemption of the subject property during the years 1985, 1986, 1987, or 1988. By letter dated 14 February 1989, the Macon County Assessor purported to remove the subject property's exemption for the tax year 1989. A portion of this letter, which appears in the record as Taxpayer Exhibit 1, is quoted below:

"It appears that your property does not meet the requirements [for exemption] 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."

3. The Appellant made a timely appeal from the decision of the County Assessor dated 14 February 1989. A hearing was held before the Macon County Board of Equalization and Review. By letter dated 5 April 1989, the Macon County Assessor informed the Appellant that the Board had decided that the subject property should not be exempt from property taxes. A copy of the letter dated 5 April 1989 was attached to the Appellant's Notice of Appeal to the Property Tax Commission (Commission Exhibit C-1).
4. By letter dated 29 April 1989 and filed with the Commission on 3 May 1989, the Appellant made a timely appeal to the Property Tax Commission from the decision of the Macon County Board of Equalization and Review.



### CONCLUSIONS OF LAW

Based on our review of the applicable law, the evidence, and our findings of fact, the Commission makes the following conclusions of law:

1. The County's motion to dismiss is denied. In the Commission's view, the Appellant made a timely appeal from an adverse decision of the local board. The Commission has subject matter jurisdiction over such appeals, and the Taxpayer's notice of appeal stated a claim upon which the Commission could give relief, namely, that the Appellant protested the removal of a previously granted exemption from ad valorem taxation.
2. The Commission does not address the Taxpayer's motions to quash certain subpoenas issued in connection with this appeal. In view of the Commission's disposition of this appeal, these motions are now moot.
3. The Commission denies the County's motion for sanctions against the Appellant. The Commission has no lawful authority to impose such sanctions.
4. The Commission concludes as a matter of law that the Macon County Assessor did not employ a lawful procedure in removing, for the tax year 1989, the exemption previously granted.

5. The Commission concludes as a matter of law that the Macon County Board of Equalization and Review for 1989 had no authority to remove the previously granted exemption from the subject property for the tax year 1989 under the circumstances presented in this appeal. But for the Assessor's letter of 14 February 1989, the Appellant would not have appealed to the local board.
6. The Commission concludes that the Macon County Assessor, in his letter dated 14 February 1989, exceeded the authority granted to county assessors under the Machinery Act.

The Commission's decision in this appeal is based on the Commission's interpretation of G.S. 105-282.1. The relevant portions of this statute were in effect as of 1 January 1984 and have remained essentially unchanged. Subsection 282.1(a)(3) provides in part:

"[a]fter 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."

Section 282.1 contains extensive provisions concerning the procedure to be employed by the assessor in granting or denying an application for exemption. The statute contains no provision, however, setting forth a procedure to be followed by the assessor who wishes to remove a continuing exemption granted in a previous tax year. The Commission's review of prior versions of this section suggests that the statute has

not been thoroughly rewritten since the time, some years ago, when an annual application for exemption was required from all owners of exempt properties, including churches.

The Commission can find no authority, either in the relevant statutes or in case law, to support the Macon County Assessor's purported removal of a previously granted exemption. The Assessor's letter of 14 February 1989 came after the end of the listing period for the 1989 tax year, and did not, in any event, require the Taxpayer to submit a new application for exemption.

In the absence of an annual application requirement, the Commission concludes that the proper statutory procedure for terminating a continuing exemption lies in subsection 282.1(a)(3). A county assessor who has reason to believe that a review of an exemption is in order because of the existence of any of the circumstances set forth in that subsection of the statute, may require the taxpayer to submit a new application for exemption for the coming tax year. To initiate this process, the assessor should notify the taxpayer that a new application will be required prior to the beginning of the listing period. This gives the taxpayer an opportunity to submit the required new application during the listing period for the tax year in question. The assessor, following the procedures set out in Section 282.1, is then required to grant or deny the new application. If the application is denied, the assessor must notify the taxpayer of his decision in time for the taxpayer to appeal the denial to the local board of equalization and review; see subsection 282.1(b).



On the other hand, if the assessor notifies the taxpayer prior to the listing period that a new application is required for the coming tax year, but the taxpayer fails to submit a new application during the listing period, the property must then be considered taxable. The statute clearly gives the assessor the authority to require a new application as a condition of continuing the exemption, when the assessor is in possession of facts which suggest that one or more of the conditions specified in subsection (a) or (b) of G.S. 105-282.1(a)(3) exists. When the assessor follows this procedure, the taxpayer has the burden of establishing that the property is entitled to exemption for the year in question. It is axiomatic in the property tax law that taxation is the rule, and exemption from property taxation is the exception. When the issue is properly raised, the taxpayer has the burden of demonstrating that the property meets the requirements for exemption for the year in question; see, e.g., In re Appeal of Martin, 286 N.C. 66, 209 S.E.2d 766 (1974); see also the first sentence of G.S. 105-282.1(a). These requirements include a timely application, as well as use and ownership conditions.

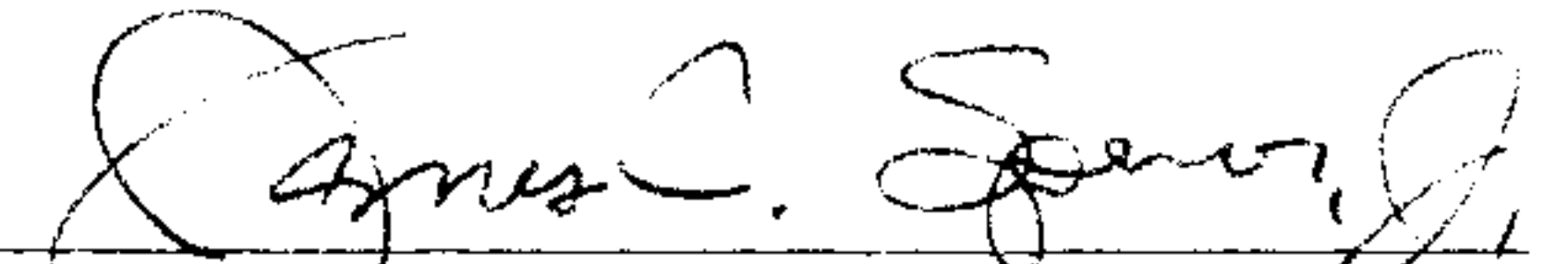
Because of the procedural defects noted above, the Commission does not reach the questions raised by the County as to the use or ownership of the subject property. The County conceded that the subject property had been exempted by the appropriate County official for tax year 1984, and that the exemption was not questioned by the County during the years 1985, 1986, 1987, and 1988. The County Assessor's attempt to remove the exemption for the tax year 1989 came too late to permit a timely application for the 1989 tax year. The existence of late application

provisions in subsection 282.1(a)(4), in the Commission's view, cannot justify the procedure employed by the County Assessor. Because the Macon County Board of Equalization and Review for 1989 had no authority to terminate an existing exemption under the facts presented in this appeal, the decision of that board must be reversed and the exemption restored to the subject property on procedural grounds as set forth above.

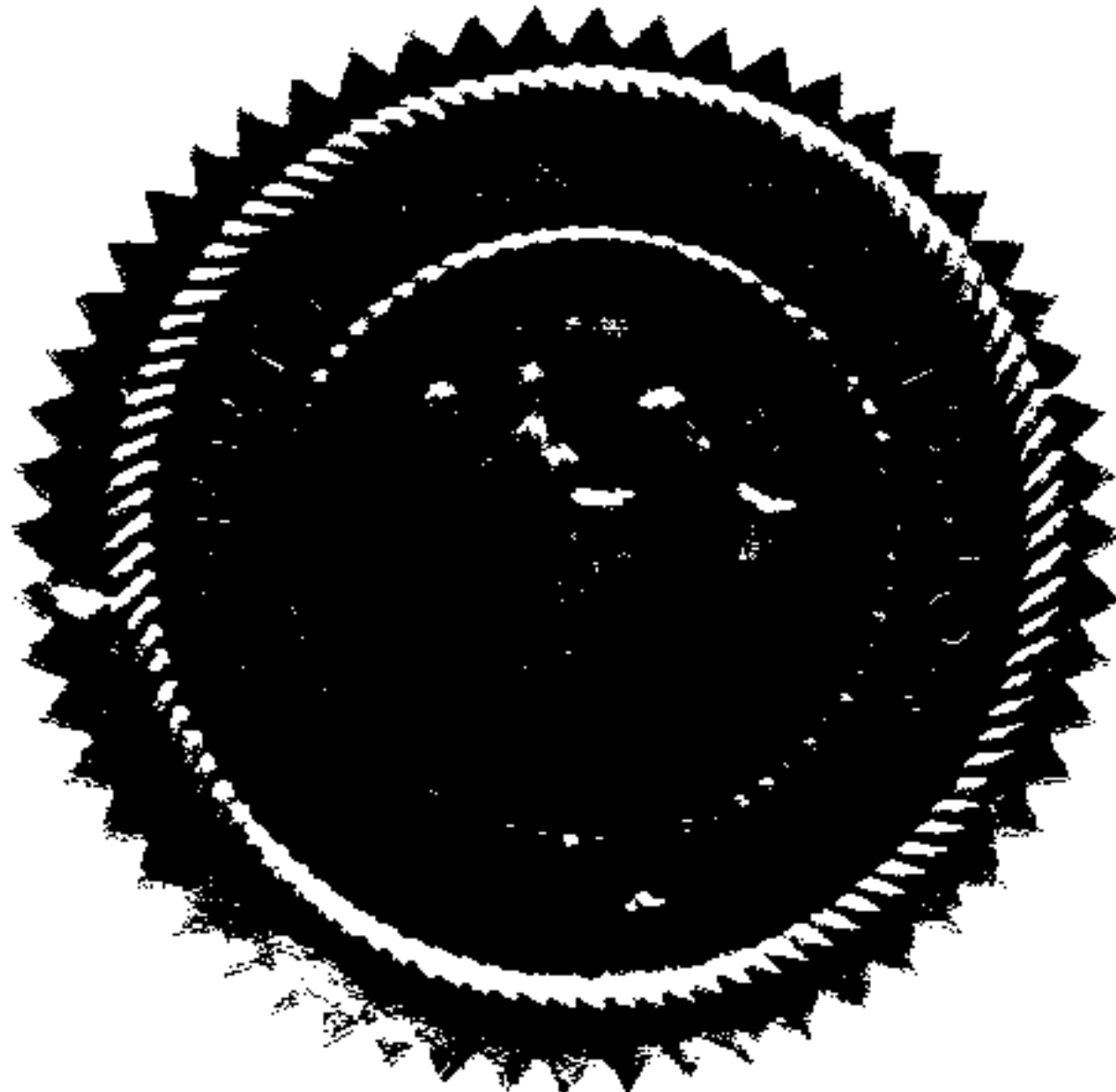
WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the decision of the Macon County Board of Equalization and Review for 1989, removing the exemption from ad valorem taxation of the subject property for the tax year 1989, is REVERSED.

This the 22nd day of December, 1989.

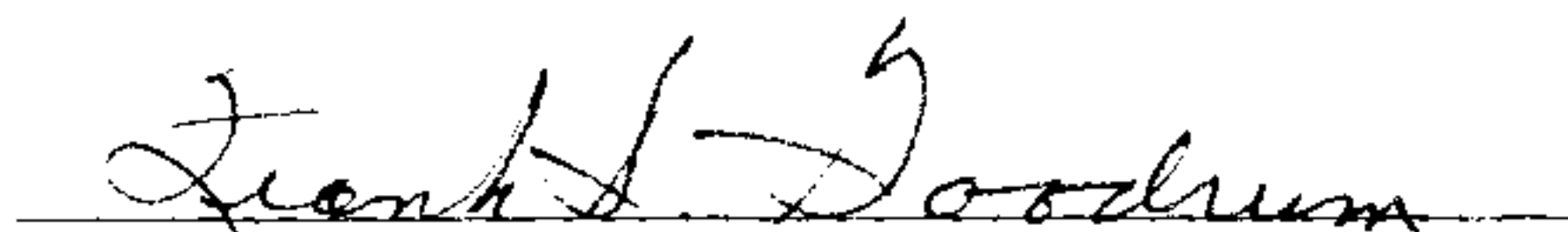
NORTH CAROLINA PROPERTY TAX COMMISSION

  
James C. Spencer, Jr., Vice Chairman

Chairman William P. Pinna did not participate in the consideration or decision of this appeal.



Attest:

  
Frank S. Goodrum, Secretary