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Taxation--Exemptions--Charitable Institutions--Assessments or Taxes (People ex rel. New York School for Deaf v. Townsend, 298 N.Y. 645 (1948))

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TAXATION — EXEMPTIONS — CHARITABLE INSTITUTIONS — ASSESSMENTS OR TAXES.—Relator is a charitable corporation within the purview of Section 4, subdivision 6, of the New York Tax Law which exempts such an institution from payment of taxes on its real property. The defendant, tax assessor for the Town of Greenburgh, has levied annual assessments on the real property owned by relator for its share of cost and construction of a water district, an ash and garbage disposal district, a fire district and a sewer district. Relator claimed that these charges were illegally imposed because they were taxes and that the relator is a tax exempt institution under the statute. The defendant insisted that the charges were not taxes but "special assessments" from which no one is exempt. *Held,* judgment for defendant affirmed. The charges levied were not taxes. They were special assessments and ". . . by subdivision 6 of section 4 of the Tax Law the Legislature intended to exempt the relator from such taxation as it would, but for the exemption, have to share for governmental purposes with all other persons in a village or city or the State, and that it was not intended to exempt the relator from assessments made for the expense to its property [1] and to impose the whole of such expenses upon other property or upon the public generally." [2] *People* ex rel. *New York School for Deaf* v. *Townsend,* 298 N. Y. 645, N. E. 2d (1948).[3]

In analyzing the soundness of this decision one must rely upon the rather short opinion of the Official Referee for the Supreme Court in Westchester County because the affirmance of the Appellate Division and of the Court of Appeals were reported as memorandum decisions and contain no statement or analysis of the bases of their conclusions. For the statement quoted in the above paragraph the lower court relied upon two cases, *Roosevelt Hospital* v. *Mayor* [4] and *Nuns of Order St. Dominic* v. *Town of Huntington.*[5] The *Roosevelt Hospital* case would seem to be poor authority upon which to base a decision construing the legislative intent behind Section 4(6) of the Tax Law. That case was decided in 1881 before the exemption

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[1] *See* Board of Education v. Town of Greenburgh, 277 N. Y. 193, 195, 13 N. E. 2d 768 (1938), wherein the court said: "By section 153 of the Education Law . . . it [the legislature] has provided that 'the grounds, buildings . . . of a school district shall not be subject to taxation *for any purpose.*' Such a general exemption does not relieve plaintiff's property from taxation imposed for local improvements by which special benefits are received. It has been held in cases involving analogous situations that such an exemption applies only to taxation imposed by general law and does not relieve real property from its just share of the burden imposed for local benefits [citing cases]." (Italics ours.)

[2] 173 Misc. 908, 18 N. Y. S. 2d at 8.

[3] This was a memorandum decision *affirming* 261 App. Div. 841, 25 N. Y. S. 2d 1002 (2d Dep't 1941) (memorandum decision), *affirming* 173 Misc. 906, 18 N. Y. S. 2d 865 (Sup. Ct. 1940).

[4] 84 N. Y. 108 (1881).

[5] 268 N. Y. 580, 198 N. E. 413 (1935).

statute had been enacted in New York. There, the act incorporating the charitable institution exempted its real estate from taxation but the court nevertheless held that such real estate was not thereby exempt from an assessment for a local improvement.[6] It is difficult to envision this decision as illuminating the legislative intent behind the section mentioned when that provision had not as yet been enacted and when the case actually involved the construction of a *private* statute. In the *Town of Huntington* case the Court of Appeals affirmed a judgment of the lower courts holding that the property of the charitable institution was not exempt from taxes levied for its share of interest on bonds issued by a water district, the proceeds of which were used to construct a water plant and water main system. This holding, although lending support to the *Townsend* decision would seem to be weak authority because of the absence of any opinion by either the lower courts or the Court of Appeals. The bases of the courts' conclusions must remain unknown and any decision which conjecturely implies these bases must stand on a shaky foundation.

The relator in the *Townsend* case relied upon an early opinion of the Attorney General [7] to support his contention that the charges complained of were taxes and not special assessments. That opinion involved a statute [8] providing that the charge for a lighting district was to be levied and collected within the district in the same manner and at the same time and by the same officers as the town tax. The Attorney General held that by reason of this procedure of assessment and collection, the charges were taxes and not special assessments and that the charitable institution was exempt from payment under Section 4(6). It should be here noted that in the *Townsend* case the charges for the ash and garbage disposal district, the fire district and the water district were all to be levied, assessed and collected in the same manner and by the same officers as the town taxes and there was no provision that the assessments be made in proportion to benefits received. As for the sewer district charge, the assessment was to be levied according to benefits received. It is evident, therefore, that the first three charges mentioned fall directly within the language and purview of the 1915 Attorney General's opinion and that by his decision they should be considered taxes, thereby exempting the relator from payment.

In a later Opinion of the Attorney General,[9] rendered since the lower court decision in the *Townsend* case, it is indicated that the

[6] The local improvement in the *Roosevelt* case was a sewer system. *See also* Matter of Dinn v. Board of Education, 121 Misc. 633, 202 N. Y. Supp. 62 (Sup. Ct. 1923) (exemption does not apply to an assessment for local improvement such as a sewer).

[7] 2 Ops. Att'y Gen. 44 (1915).

[8] N. Y. Town Law § 263.

[9] Ops. Att'y Gen. 386 (1943), 1944 Leg. Doc. No. 29.

tax assessors have relied upon the earlier opinion as authority since 1915 and that they have proceeded to exempt such charges as taxes. After discussing the earlier opinion, the *Townsend* case and several related cases, the Attorney General has indicated the present state of affairs on this point as follows: [10] "Under these decisions, the distinction to be observed is between taxes levied for the ordinary support of government and those taxes or assessments which are levied in special districts to cover the expense of improvements which are specifically beneficial to property. The latter, under the law now existing, appear to include not only those levies that are commonly termed special assessments for local improvements, *i.e.*, assessments that are charged upon the properties in proportion to the benefits received, but also levies upon properties in special districts that are in fact for local improvements even though they are levied, like ordinary taxes, in accordance with the assessed valuations of the properties.

"In response to your specific inquiry, you are advised that the effect of the decisions in the *Townsend* and *Town of Huntington* cases is to overrule the 1915 opinion of the Attorney-General mentioned above."

From the preceding group of cases we have seen that, vague and unsatisfactory as they are, they have at least been consistent to the extent that invariably the courts have avoided permitting exemptions. In each case their decision was predicated on the "inherent" difference between taxes levied for the general support of government and assessments for local improvements. The origin of the distinction is fairly vague and is not founded upon statute. Unfortunately it is now a deeply rooted judicial precedent. It would be difficult to find another series of cases which so enthusiastically beg the fundamental question involved and rely instead upon a superficial distinction of nomenclature. Possibly the courts have been misled to their conclusion because if one does ignore (as have the courts) the paramount reasons for exempting charitable institutions from taxation it does seem eminently fair to assess local property for local improvements. Had they come to grips with the basic reason for the charitable exemptions and found in these assessment cases the reason wanting, there could then be little cause to complain. Instead we find them guilty of three fundamental errors which we will first enumerate and then discuss in detail. They are: (1) begging the question of legislative intent by assuming that intent to be exemption from taxes but not from assessments; (2) creating differentiations and distinctions without adequately justifying them; and (3) avoiding opinions and contenting themselves with inadequate memoranda. The two last are complementary.

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[10] *Id.* at 387.

The *Townsend* case contained a prime example of what we mean by begging the question of legislative intent. Consider again this statement: "It seems clear enough that by subdivision 6 of section 4 of the Tax Law the Legislature intended to exempt the relator from such taxation as it would, but for the exemption, have to share for governmental purposes with all other persons in a village or city or the State, and that it was not intended to exempt the relator from assessments made for the expense of improvements specifically beneficial to its property and to impose the whole of such expense upon other property or upon the public generally. This was the language used in the opinion of *Roosevelt Hospital* v. *Mayor* . . . ." [11] Aside from the fact that the *Roosevelt* case preceded the passage of the exemption statute by several years, it is difficult to see how this statement can be justified by a reading of subdivision 6 of Section 4 of the Tax Law or by a consideration of the factors which prompted its passage. This statute says simply: "The following property *shall be exempt from taxation* . . . . 6. The real property of a corporation or association organized exclusively for the moral or mental improvement of men and women or for religious . . . charitable . . . and used exclusively for carrying out thereupon one or more of such purposes." Further along in the act there is included the requirement that there be no profit making but nowhere is there to be found any enumerated types of tax which are specifically exempt. Thus in construing this statute we are aided by the general rule that enumeration weakens the purview of the statute and that lack of enumeration indicates complete general application. Applying this test we are left with a blanket exemption of all taxes, whether for some convenient purposes they are denominated "special assessments" or not.

There are many cases to be found to the general effect that exemptions are not favored and are to be strictly construed; that the exemption must be expressed in clear and unambiguous language, and within the intention of the legislature.[12] Subdivision 6 of Section 4 is clear and unambiguous on its face and its *general exemption* should be strictly construed to the effect that since it grants a general exemption, this exemption should not be whittled away by judicial surgery.[13] This legal argument becomes even more potent when we

[11] See note 2 *supra*.

[12] People v. Cameron, 140 App. Div. 76, 124 N. Y. Supp. 949 (3d Dep't 1910), *aff'd*, 200 N. Y. 585, 94 N. E. 1097 (1911); People v. Purdy, 179 App. Div. 805, 167 N. Y. Supp. 285 (1st Dep't 1917), *aff'd*, 224 N. Y. 710, 121 N. E. 885 (1918); Matter of Francis, 121 App. Div. 129, 105 N. Y. Supp. 643 (4th Dep't 1907), *aff'd*, 189 N. Y. 554, 82 N. E. 1126 (1907).

[13] The rule requiring strict construction of exemptions from taxation must be applied in light of purposes to be furthered by the exemptions granted, and if evidence shows use of property to be in furtherance of purposes encouraged and fostered by exemption, an overzealous adherence to strict construction should not be indulged so as to thwart such purposes. New York

consider it in relation to the political and social significance of charitable exemptions.

There can be little doubt that our social order has now reached a stage of development where our institutions of education, medicine, and religion have become a vitally necessary part of our society. There also can be little doubt that at present a large percentage of these services are rendered by charitable institutions completely independent of direct governmental aid. There also can be little doubt that if these services were not rendered by these institutions the Government would be compelled to perform the services itself at enormous cost.[14] With this thought in mind and with no thought of benevolence but rather only of self service the state established tax exemptions for charitable institutions. This policy was so clear that in order to avoid it the courts had to justify their decisions by creating a type of taxation known as special assessment. They further rationalized their distinction by pointing out that the special assessments were levied only for direct benefit to the institutions involved. They failed to perceive that *money not paid* by institutions for general government is just as useful to them in furthering their purposes as *money not paid* by them for local street improvements.

Only one possible argument refuting this rationale presents itself but upon careful examination, it, when weighed against the wisdom of the contrary view, does not loom very weightily. Local assessments are collected upon a circumscribed basis depending upon the nature and extent of the improvement. It is possible to imagine a situation wherein the charitable institution's holdings are so large and the remaining holdings in a district subject to the assessment are so small that it would be a great burden on the non-exempt taxpayers. But the situation is not likely. What is likely and does occur frequently is the reverse of our hypothesis. Instances are not rare in which we find that the assessment upon the institution is a formidable one whereas the same assessment spread over the remaining taxpayers would be negligible. The hardships of the first case can easily be solved without resorting to methods which further financially embarrass charitable institutions, many of which are habitually on the brink of insolvency.

In any event to so drastically depart from the apparent legislative pattern, the courts certainly should have done so by well considered opinions which fully support the point. So chary have they been of reason one almost suspects that they lack reasons. As pointed

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Catholic Protectory v. City of New York, 175 Misc. 427, 23 N. Y. S. 2d 789 (Sup. Ct. 1940); St. Barbara's Roman Catholic Church v. City of New York, 243 App. Div. 371, 277 N. Y. Supp. 538 (2d Dep't 1935).

[14] With our American concept of separation of Church and State the social uses of religion as linked with education and medicine might be debated. But even in the absence of all religion the State would still have to find a substitute for religion's undoubted contribution to social discipline and morality.

out earlier the *Townsend* case relied upon two cases for its authority, one containing no opinion and the other, although it had an opinion, antedated the passage of subdivision 6 of Section 4 of the Tax Law. This latter case while pivoting upon the interpretation of a private statute incorporating the hospital, did establish clearly the distinction between taxes and special assessments.[15] However, it limited the distinction to what would clearly be special purpose assessments. A fair reading of the case would never support the *Townsend* decision in so far as it validated special assessments which, while for a local improvement, were collected as general taxes and not apportioned directly to the benefit received.

In conclusion it is recommended that a new evaluation and declaration of policy be made upon this problem. For the first time the purpose of the legislature should be fully and openly considered with respect to the entire purpose of charitable exemptions because at present it is not at all clear that the legislature did not intend a full exemption.

The entire line of decisions should also be reconsidered towards the purpose of more clearly categorizing them since many of them can be distinguished. For example public school district cases should not be lumped with charitable institutions since they are tax supported anyway and the problems of both are leagues apart. Secondly, exemptions sought under specific statutes should not be confused with exemptions sought under the general tax exemption of Section 4 of the Tax Law. Finally and above all, a definite answer must be made to the question, is the burden of the special assessment to be levied in direct proportion to the benefit received. In considering this last, further clarification must be made as to the method of collection and the remoteness as to time of the possible benefit.

H. V. M.
A. P. D.

TAXATION—FAMILY PARTNERSHIP.—Respondent, a rancher in Texas, sold an undivided one-half interest in a herd of cattle to his four sons taking their promissory notes therefor. A family partnership was formed by the father and his sons, and the boys repaid the note from their share of the partnership profits. The Commissioner of Internal Revenue ruled that the entire income from the partnership must be taxed to respondent. The Tax Court sustained the Commissioner on the grounds that the taxpayer had not satisfied the requirements for recognition of family partnerships set out by the United States Supreme Court in the *Tower*[1] and *Lusthaus*[2] cases.

[15] Roosevelt Hospital v. Mayor, note 4 *supra*.
[1] Commissioner of Internal Revenue v. Tower, 327 U. S. 280 (1946).
[2] Lusthaus v. Commissioner of Internal Revenue, 327 U. S. 293 (1946).