rouse + copeland LLC
ATTORNEYS

Memo

From: CLR
Date: Thursday, October 10, 2024
Re: PIN 0285 0005

It appears there Georgia nonprofit corporations which are apparently conducting equine therapy on their property and claiming a right to a charitable exemption from property taxes. As I understand the underlying facts, there are two separate issues here: (1) Are the corporate property owners entitled to non-taxable status per the exemption from *ad valorem* tax provided for under O.C.G.A. § 48–5–41(a)(4); and (2) if not, are property owners entitled to CUVA treatment for property that was transferred to them while in a CUVA covenant?

Tax Exemption

One sub-section of the tax exemption statute, O.C.G.A. § 48–5–41(c), provides that "…property exempted by this Code section … shall not be used for the purpose of producing private or corporate profit and income distributable to shareholders in corporations owning such property or to other owners of such property, and any income from such property shall be used exclusively for religious, educational, and charitable purposes or for either one or more of such purposes and for the purpose of maintaining and operating such religious, educational, and charitable institutions."

Another sub-section, O.C.G.A. § 48–5–41(d)(1), provides generally that the exemption "… shall not apply to real estate or buildings which are rented, leased, or otherwise used for the primary purpose of securing an income thereon and shall not apply to real estate or buildings which are not used for the operation of religious, educational, and charitable institutions."

More generally, being a non-profit corporation under Georgia law, or a 501(c)(3) under federal law, does not end the inquiry into a claimed charitable purpose tax exemption. The organization has to actually be operating as an institution of purely public charity. It is the use to which the property is put, rather than a declaration of the property's purposes, that determines whether the property is exempt from taxation. For example, these property owners may be charging for Equine Assisted Therapy or

similar—in that case, it's not purely public charity, and is not tax-exempt. The taxpayer must be able to show the following:

> First, the owner must be an institution devoted entirely to charitable pursuits; second, the charitable pursuits of the owner must be for the benefit of the public; and third, the use of the property must be exclusively devoted to those charitable pursuits."

York Rite Bodies, etc. v. Bd. of Equalization, etc., 261 Ga. 558 [2] (1991). *See also P'ship Hous. Affordable to Soc'y Everywhere, Inc. v. Decatur Cnty. Bd. of Tax Assessors*, 312 Ga. App. 663, 663 (2011).

In addition: The Court of Appeals of Georgia has approved the granting of "proportional tax exemptions;" that is, exempting the part of the property that is purely charitable, while taxing the part of the property connected to money-making. *Fulton Cnty. Bd. of Tax Assessors v. Piedmont Park Conservancy*, 333 Ga. App. 265, 266 (2015).

Speaking very generally, money-making from operations on the property may take the corporation out of purely public charity status. But it is very fact-specific, which means you have to get some pretty specific information from the corporation. For example, the Supreme Court of Georgia has granted tax exemptions to charities even when the commercial activity at those charities' properties have generated income, as long as that income is used exclusively for religious, educational, or charitable purposes. In *Elder v. Henrietta Egleston Hosp. for Children*, 205 Ga. 489 (1949) an exemption was upheld for a hospital that charged patients varying proportions of their medical care, but used all of the income generated for charitable purposes. In *Church of God of the Union Assembly v. City of Dalton*, 216 Ga. 659 (1961), the Supreme Court upheld an exemption for a church building containing a restaurant used primarily to feed members of the church, visiting church personnel, and persons in need, but which was also open to paying customers. In *Peachtree on Peachtree Inn v. Camp*, 120 Ga. App. 403 (1969), the Court of Appeals held that although a small portion of a building owned by the Georgia Baptist Convention and used by two retail stores "would not be tax exempt" but that the portion of the same building actually used as a home for the aged was tax-exempt even though residents paid rent. Id. at 411. In *H.O.P.E. ex rel. Divine Interventions, Inc. v. Fulton Cnty. Bd. of Tax Assessors*, 318 Ga. App. 592 (2012) the Court of Appeals held a charity was

not entitled to exemption, carving out a *time* period in which charity was not dispensing any charitable housing or services connected with the property. In *Nuci Phillips Mem. Foundation v. Athens–Clarke County Board of Tax Assessors*, 288 Ga. 380, 385(2) (2010) (*plurality opinion*) the Supreme Court looked at the third prong of the *York Rite* test and decided the renting of space for private birthday parties and wedding receptions was still a use of the property that could be considered as used "exclusively" for the charitable purpose. Id. at 384–385(1). In contrast, in *P'ship Hous. Affordable to Soc'y Everywhere, Inc. v. Decatur Cnty. Bd. of Tax Assessors*, 312 Ga. App. 663, 665–66 (2011) the Court of Appeals upheld a decision that a charitable corporation's complex business activities surrounding various tax credits and loans were "not devoted entirely to charitable pursuits" which the court felt resulted in some gain to charity's operators.

In short, you need more information about who is paying, how much they're paying, whether payment is on a sliding scale with *de minimis* or zero amounts for those unable to pay, etc., as well as information about what is done with the money the corporation receives from such business activities (assuming there are such business activities).

CUVA

If a non-profit takes title to the property and does *not* honor the CUVA requirements, then the transfer is a breach *unless* the transfer meets the exemption at O.C.G.A. § 48–5–7.4 (p)(4)(A) (exemption, in part, for transfers to "institution(s) of purely public charity" of no more than 25 acres). *See also* O.C.G.A. § 48–5–41.

So the treatment of the CUVA exemption *might*, in the right circumstance, depend also upon a determination about whether the corporation is a purely public charity.

Conclusion

The short answer is that it's really fact-specific, and the corporations claiming this exemption must provide supporting documentation about what money they receive and where it comes from, as well as what money or assets inure to the benefit of anyone running the corporation.