Construing Statutes That Exempt Non-Taxable Property from Taxation—

An Exercise in Semantics?

By CHARLES D. RAY and
MATTHEW A. WEINER

Despite the complexity of Connecticut's statutory scheme governing municipal taxation of real and personal property, that scheme is premised on the simple, underlying belief that the burden of taxation should be equally apportioned among all taxpayers, based on the value of the taxable property that they own. In service of this belief, § 12-62a(a) of the General Statutes provides for a "uniform assessment date" of October first of each year. Likewise, subsection (b) of that same statute provides that all property within a municipality shall be assessed "at a uniform rate of seventy per cent of present true and actual value…." Section 12-64(a) identifies the types of property subject to taxation and, once again, mandates that such property "shall be liable to taxation at a uniform percentage of its present true and actual valuation…."

Under this system, the starting point for taxation of property becomes a two-step process: 1) determine the true and actual value of the property as of the assessment date; and 2) multiply that value by 70 percent to determine the "assessed" value of the property. The Supreme Court has stated that these statutes, taken together, "contemplate assessments based upon a consideration of the individual characteristics of each property listed. Everything that might legitimately affect value must be considered." *Chamber of Commerce of Greater Waterbury, Inc. v. Waterbury*, 184 Conn. 333, 337 (1981). And any "circumstances indicating that a disproportionate share of the tax burden is being thrust upon a taxpayer would warrant judicial intervention." *Id.* at 336; see *Uniroyal, Inc. v. Board of Tax Review*, 182 Conn. 619 (1981); *Lerner Shops of Connecticut, Inc. v. Waterbury*, 151 Conn. 79 (1963).

This "uniform" system of equal sharing of the municipal tax burden is, however, rendered so much more complicated by the inclusion in § 12-64(a) of two words that apply the taxation scheme only to listed types of property that are "not exempted." First, there is the sheer volume of property that is exempt from taxation. The principal listing of such property is contained in § 12-81 of the General Statutes. In addition to § 12-81's listing of property that is exempt on a state-wide basis, §§ 12-81a through 12-81jj include a number of options for property to be rendered exempt at the municipal level. Second, and as you might suspect, the exemption statutes are not always models of simplicity or clarity. For example, § 12-81(41) exempts "asses and mules" owned and kept in Connecticut, but § 12-81(68) exempts any "horse or pony" only up to an assessed value of $1,000, unless the horse or pony is "used in farming," in which case it is totally exempt. Add to this the ability of a municipality to fully exempt a horse or pony "of any value" from taxation; § 12-81gg; and the taxation of horses and ponies gets complicated very quickly. And this is but one example.

Connecticut courts have been called on with some frequency to resolve disputes between taxpayers and municipal assessors over whether certain property falls within the bounds of a particular exemption. When confronted with a dispute over the meaning of statutory language that grants an exemption, the default rule for a court is to construe the statutory language strictly, in favor of rendering the property taxable. The underlying basis of this rule makes sense—exempting property from taxation lifts the burden off of one property owner and places that burden

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on all other taxpayers under the "uniform" system that is the general rule. *St. Joseph's Living Center, Inc. v. Windham*, 290 Conn. 695, 707 (2009).

But this rule of strict construction may or may not be applicable to all statutory exemptions. Take, for example, § 12-81(7), which exempts real property owned, or held in trust for, "a corporation organized exclusively for scientific, educational, literary, historical or charitable purposes" and "used exclusively for carrying out one or more of such purposes." The Supreme Court, in *Loomis Institute v. Windsor*, 234 Conn. 169, 176 (1995), stated that this portion of the statute does not grant an exemption "in the technical sense" and, instead, "'merely states a rule of nontaxability.'" *Id*. (quoting *Arnold College v. Milford*, 144 Conn. 206, 210 (1957)). The *Loomis* Court went on to note that it "consistently has interpreted broadly the statutory requirement that property be used 'exclusively for carrying out' an educational purpose." *Loomis*, 234 Conn. at 176.

The notion of "exempt" property being nontaxable surfaced again in *St. Joseph's Living Center*, where Justice Zarella acknowledged the historical basis for the rule, but then allowed that the Court could not "discern precisely why this approach has seemingly become extinct" nor "whether it is applicable beyond the educational context." *Id*., 290 Conn. at 708 n.22. In the end, the Court's holding in *St. Joseph's Living Center* would have been the same under either approach. *Id*. The issue of strict construction versus nontaxable property was mentioned again, most recently, in *Rainbow Housing Corp. v. Cromwell*, ___ Conn. ___ (Slip opinion released Sept. 1, 2021). There, however, the Court did not "resolve the conflict between the modern trend of strict construction and the historical trend of liberal construction" because neither of the parties had asked the Court to do so. *Id*., ___ Conn. at ___ n.6.

At issue in *Rainbow Housing* was subsection (B) of § 12-81(7). That subsection provides an exception to the exemption contained in subsection (A), such that "housing subsidized, in whole or in part, by federal, state or local government…shall not constitute a charitable purpose under this section." To complicate things further, subsection (B) also sets forth an exception to the exception to the exemption. Namely, that "housing" shall not include "real property used for temporary housing belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes" where the primary use of such property is for one or more of five listed purposes.

The conundrum in *Rainbow Housing* involved the meaning of the word "temporary" in subsection (B). The plaintiffs own property in which up to five men are housed and who receive services until such time as they no longer need those services. There is no specific term by which residents must leave the facility. Instead, they move out once they are capable of living more independently. Because the housing provided by the plaintiffs was not limited to a finite length of time, the defendant town claimed that the housing provided was not "temporary" and, thus, the property did not qualify for an exemption.

Although endorsing the rule of strict construction for tax exemption statutes, Justice Ecker (for himself and Justices McDonald, D'Auria, Mullins and Kahn) also allowed that charitable uses or purposes are defined "rather broadly" and that the rule of strict construction "neither requires nor permits the contravention of the true intent and purpose of the statute as expressed in the language used." Under this view, "charity embraces anything that tends to promote the well-doing and the well-being of social man."

Because the word "temporary" is not defined in the statute, Justice Ecker first looked to dictionary definitions and concluded that subsidized housing is "temporary" if it is "limited in duration, impermanent, or transitory." As such, the term "temporary" is ambiguous in this context, because it "imposes no fixed durational limitation." Justice Ecker then turned to legislative history to resolve the ambiguity. Based on that history and the objectives animating the exemption, Justice Ecker concluded that the term "temporary" does not incorporate an "inflexible or fixed durational limitation." "So long as a resident's stay is impermanent, transitional, and in furtherance of one of the enumerated categories of charitable purposes, it is 'temporary' within the meaning of § 12-81(7)(B)." Based on this interpretation, Justice Ecker had little trouble affirming the trial court's determination that the plaintiffs' property was exempt.

The Cromwell assessor might argue, however, that regardless of whether the Court explicitly resolved any "conflict" in methodology it, in fact, applied in *Rainbow Housing* the historical trend of liberal construction. After all, shouldn't a strict construction of an ambiguous statute end in a result favoring taxation? That thought might, perhaps, explain Chief Justice Robinson's concurrence, in which he arrived at the same result as did Justice Ecker, albeit by concluding that the term "temporary" is plain and unambiguous in context, due to the legislature's failure to include any time limitation for temporary housing.

Our prediction is that statutes granting exemptions for educational, religious, and other charitable uses will continue to be broadly construed and applied, even without an explicit adoption by the Court of the notion that such property is nontaxable rather than exempt. And if you're curious about the theory of nontaxable property, we recommend *Yale University v. New Haven*, 71 Conn. 316 (1899), which discusses the historical basis for that doctrine. ■

■ Any views expressed herein are the personal views of DASA Weiner and do not necessarily reflect the views of the Office of the Chief State's Attorney and/or the Division of Criminal Justice.

Charles D. Ray *is a partner at McCarter & English LLP, in Hartford. He clerked for Justice David M. Shea during the Supreme Court's 1989–1990 term and appears before the Court on a regular basis.*

Matthew A. Weiner *is Assistant State's Attorney in the Appellate Bureau of the Office of the Chief State's Attorney. ASA Weiner clerked for Justice Richard N. Palmer during the Supreme Court's 2006–2007 term and litigates appellate matters on behalf of the State.*