DISTURBING DEVELOPMENTS IN FLORIDA PROPERTY TAX EXEMPTION ADMINISTRATION

By Mike Batts, CPA

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[Note – we have reported on this matter previously…recent developments and new information have caused us to raise our level of concern about it.]

Florida's county property appraisers are currently deciding how to react to a 2016 Florida Appeals Court decision holding that the same exempt organization that owns a property must be the actual user of the property in order for the property to qualify for tax exemption.

In its opinion on the case, *Genesis Ministries, Inc. v. Brown*, the Florida Court of Appeals for the First District stated (claiming reliance on other cases):

"It is not enough that an exempt entity owns the property and that the property is being used for exempt purposes. The exempt entity owner must also be the entity using the property for exempt purposes."

The case involved one entity owning the property and renting it to an exempt entity, which clearly used the property for exempt purposes. Some of the specific (and, in our opinion, very important) facts about the ownership and use of the property are not clear from the facts described in the opinion. Regardless, the absolute nature of the above-cited statement in the opinion has gotten the attention of Florida's county property appraisers. In Florida, county property appraisers are responsible for determining whether a property in their county qualifies for property tax exemption.

We have begun to hear from reliable sources that some Florida property appraisers are strictly applying the statement from the *Genesis* case as quoted above.

It is true that Florida law provides that a property must be owned by an exempt entity and used for exempt purposes in order to qualify for exemption. Florida law is not specific or clear that the use of the property must be by the same entity that owns the property in order to qualify for exemption. In fact, one provision in the Florida Statutes specifically lists as an example of exempt use a scenario in which the exempt owner allows other exempt organizations to use a property for exempt purposes and where the using organizations pay rent which is less than the owner's cost. Historically, Florida's property appraisers have generally taken a fairly flexible approach to addressing this issue. That could be changing.

Major Potential Implications

The conclusions that Florida's 67 county property appraisers reach on this issue could have a far-reaching impact for Florida's nonprofits. The positions they take could be problematic for current and future property tax exemptions in a multitude of scenarios. Following is a very short list of common scenarios in Florida where property has been considered exempt, and where those exemptions could now come under question:

- A church owns property and allows a related but separately incorporated tax-exempt school or other ministry to conduct exempt activities on the property (with or without paying rent).

- An operating charity or church utilizes a related entity established for risk management purposes to hold real property for the benefit of the charity or church, and the charity or church uses the property for exempt charitable or religious purposes (with or without paying rent).

- A foundation's purpose is to support charities in the community. One way it carries out its mission is by owning a building and allowing community charities to lease space in the building for less than fair rental value.

These are just a few examples of the myriad of scenarios in which one exempt entity owns property that is actually used by one or more other exempt entities to conduct exempt activities. If property appraisers take a hard line in applying the Appeals Court's opinion on this matter, the impact on property tax exemptions in Florida could be profound.

Our team will continue to monitor this issue closely – and we may need to sound the alarm for a legislative solution. If your organization encounters this issue in connection with its property tax exemptions, please let us know as soon as possible!