

DIAMONDS ARE FOREVER, BUT NEW YORK TAX EXEMPTIONS ARE NOT

Hodgson Russ Real Property Tax Assessment & Eminent Domain Alert
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The loss of a significant portion of its tax exemption for a church educational property demonstrates how New York law evaluates tax exemptions and how exemptions can be lost if the exempt status and use are not maintained. *Matter of Sisters of the Presentation of the Blessed Virgin Mary v. Van Wagenen*, 2024 WL 117003, (3d Dep’t, Jan. 11, 2024).

The Sisters of the Presentation of the Blessed Virgin Mary own two parcels in the Town of Guilderland that qualified for exemption from real property taxes for religious and educational purposes, pursuant to RPTL § 420-a (1)(a). One parcel contained a convent, while the other—the subject of the litigation—contained a closed school building, a mansion, a playground, and other structures. Following the closing of the school, use of the property was limited to the playground and outbuilding where supplies were stored, as well as the driveway and parking area. Since the 1980s, the properties were exempt from real estate taxes as a religious and educational institution. In 2018 and 2019, the Town denied the tax exemption applications, finding that the properties were no longer being used for exempt purposes. The Board of Assessment Review affirmed this determination.

The lower court reversed the denial of the exemption on the convent property. But after trial found that, on the school property, only the portion actually used for exempt purposes was entitled to the exemption, and the remainder of the property was taxable. The Third Department affirmed.

The Appellate Division noted that while “the burden of proof in tax exemption matters ordinarily lies with the party seeking an exemption, a municipality seeking to withdraw an existing exemption bears the burden of proving that the real property in question has become subject to taxation” *Sisters of Presentation of Blessed Virgin Mary*, *supra* at *1, quoting *Matter of St. William’s Church of Troy, N.Y. v. Dimitriadis*, 115 A.D.3d 1031, 1032 (3d Dep’t 2014). The Court rejected the petitioner’s assertion that such apportionment was “limited to circumstances where a portion of a property is used for a pecuniary purpose,” and, as the “record is clear that the remainder of the 42-acre property was completely vacant and unused, and that it neither served to further the exempted purpose nor was it reasonably incidental to such use,” the lower court properly allowed a partial exemption. *Sisters of Presentation of Blessed Virgin Mary*, *supra* at *2.

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Hodgson Russ Insights: Financial constraints on religious and educational institutions can lead to similar situations where portions of a property are in decline and unusable for their exempt purpose. One potential route forward for exempt owners is that when changes in the use of all or a portion of an exempt property for the exempt purpose occurs, the exemption can be maintained, when the use ends or its end is contemplated, by demonstrating that the not-for-profit owner has specific and firm plans to reuse the property for an exempt purpose. This recent decision presents no evidence that the religious corporation presented plans for future reuse or rehabilitation of the school property, which were acknowledged to be in an unsafe and unusable condition. If an exempt organization can show that “development of the property for tax exempt purposes was ‘in good faith contemplated,’” the exemption is available. *Legion of Christ, Inc. v. Town of Mount Pleasant*, 1 N.Y.3d 406, 413 (2004). Showing concrete, definite plans, and progress towards achieving those plans, such as redeveloping or rehabilitating the property for educational purposes or other religious or educational uses, qualifies property for a tax exemption. See *Matter of Trustees of the Masonic Hall & Asylum Fund v. Assessor for the Town of Henrietta*, 78 Misc.3d 1230 (A), 187 N.Y.S.3d 578 (Sup. Ct. Monroe Cnty. 2023) (Petitioner was entitled to RPTL § 420-a exemption from real property taxation if: (1) “the construction of such buildings or improvements is in progress or is in good faith contemplated by such corporation or association ...” and (2) Petitioner is not “deriving revenue” from the vacant land.). See also RPTL § 420-a(3)(a).

If you have questions on real property tax exemptions, contact [Daniel Spitzer](#), [Amy D’Ambrogio](#), [Henry Zomerfeld](#), or any member of the Hodgson Russ [Real Property Tax Assessment & Eminent Domain Practice](#).

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