

Tax Exemption Denied for High-end Restaurant Located on Kean University Campus

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On June 30, 2020, the New Jersey Supreme Court reversed the Appellate Division in Gourmet Dining, LLC v. Union Township (A-8-19), finding that a high-end for-profit restaurant located on the Kean University campus did not qualify for a local tax exemption.

Applicable Tax Statutes

The Supreme Court discussed the applicability of several tax statutes in their decision. Specifically, N.J.S.A. 54:4-1 states that all property real and personal in New Jersey that is not expressly exempted from taxation is subject to taxation.

There are many statutory exemptions from local taxation including N.J.S.A. 54:4-3.3 (public property exemption and N.J.S.A. 54:4-3.6 (non-profit organization exemption). Also, N.J.S.A. 54:4-2.3 states that real property entitled to tax exemption loses its exemption when leased to a person or entity whose property is not exempt. The last statute addressed in the opinion, N.J.S.A. 54:4-1.10, states that an arrangement that is not technically a lease but operates as one is subject to taxation.

The Facts

Gourmet Dining, LLC owned and operated a fine dining restaurant named Ursino. The Ursino Restaurant, a steakhouse and tavern, is located inside Kean University's New Jersey Center for Science, Technology and Mathematics Building (STM Building). Kean University is located in Union Township. Construction of the STM Building was financed through tax exempt bonds issued through the New Jersey Educational Facilities Authority. This Authority owned the STM Building and leased it to Kean University pursuant to a Lease Agreement.

The restaurant inside the STM Building idea came from a resolution between Kean's Board of Trustees and the Kean University Foundation (Foundation), a non-profit organization that receives, invests and administers private support for Kean and also manages and awards scholarships for students to attend Kean. The resolution granted the Foundation the right to launch a restaurant in a portion of the STM Building. Under the resolution, a minimum of 10% of the restaurant's gross revenues were to be allocated for scholarship purposes within the Foundation. Kean then entered into a contractual agreement with the Foundation to manage the property and subcontract its management rights to a manager with extensive experience in the restaurant business. The Foundation signed a Management Subcontract Agreement (MSA) with Gourmet Dining to operate, manage and control Ursino. Gourmet Dining agreed to pay the Foundation \$250,000 per year and also agreed to pay the Foundation 12.5% of Ursino's gross revenue.

Union Township notified Gourmet Dining that it would receive a tax bill because the Township considered Gourmet Dining to be a lessee. Gourmet Dining eventually challenged the local tax bill in Tax Court.

Tax Court and Appellate Division Decisions

The Tax Court concluded that Gourmet Dining did not establish that the property was being used for a public purpose and, therefore, did not qualify for a local property tax exemption. Also, the court found that Gourmet Dining had essentially a leasehold interest in the property and should be subject to local taxation. The court agreed with the Township's argument that Ursino was no different from any other restaurant, bar or tavern in Union (e.g. Galloping Hill Inn at Five Points).

The Appellate Division disagreed. The appeals court examined the relationships between the restaurant and Kean University and found that the property should not be taxed because it was being used for a public purpose. The court set forth the following factors in its decision: (1) the restaurant is located on Kean's campus, (2) Kean's students and parents regularly dine at the restaurant, (3) Gourmet Dining's annual management fee is used for Kean scholarships, (4) Kean's Board of Trustees determined that having an upscale restaurant on campus enhanced the public's perception of Kean, thereby serving as a recruiting tool, (5) many of the restaurant's employees were Kean students, and

(6) the restaurant used produce grown on Kean grounds.

Supreme Court Decision

The Supreme Court stated that to satisfy the public purpose tax exemption, the public purpose must be the paramount factor in an arrangement with a private entity's use of public property. In order for a public purpose tax exemption to apply, any private advantage must be incidental or subordinate. In this case the Supreme Court found that the paramount factor in the operation of Ursino on Kean's campus was making money, ie. for-profit. Also, the court noted that Kean was not running a culinary institute. In addition, the Supreme Court agreed with the Tax Court that Gourmet Dining's contractual arrangement (the MSA) with the Foundation was the functional equivalent of a lease, meaning no tax exemption.

Despite Gourmet Dining's belief that being on campus would entitle it to a local tax exemption, in this case, Kean was not Abel.