

JUNE 2, 1960

HONORABLE JOHN A. KERVICK
State Treasurer of New Jersey
State House
Trenton, New Jersey

FORMAL OPINION 1960—No. 16

DEAR MR. KERVICK:

We have been asked for an opinion as to when an exemption from taxation becomes effective for property which was taxable on October 1st of the pre-tax year and is then declared exempt by statute enacted during the tax year. An example of this problem is shown by Laws of 1959, Chap. 3, an Act that amended R.S. 54:4-3.24 to include the Boy Scouts and Girl Scouts of America among those associations whose property is exempt from taxation. This Act was approved on February 3, 1959. Section 2 thereof provided that: "This act shall take effect immediately."

The question presented under these circumstances is whether an exemption for part or all of the tax year in which the Act was passed may be allowed. There are related variations of this problem. Its understanding will be found in a general examination of the tax statutes and cases.

R.S. 54:4-1 provides in part, that "all property shall be assessed to the owner thereof with reference to the amount owned on October first in each year * * *." It is generally held that, "Property is assessable or exempt with reference to its ownership and use on October 1 preceding the calendar year." *Jabert Operating Corp. v. City of Newark*, 16 N.J. Super. 505, 508 (App. Div. 1951); *Jersey City v. Montville*, 84 N.J.L. 43 (Sup. Ct. 1913), aff'd. on op. below, 85 N.J.L. 372 (E. & A. 1913); *Shelton College v. Ringwood*, 48 N.J. Super. 10 (App. Div. 1957); 16 McQuillan, *Municipal Corporations* 279, Taxation § 44.105.

In *Jersey City v. Montville*, *supra*, privately held property used for water supply purposes was conveyed to the City of Jersey City on October 10, 1911. The City then claimed an exemption for all or a portion of the tax for the year in question. The court held that exemptions from taxation are determined by the status of the property on the assessment date and that "land is not exempt because subsequently it passes to an owner who is exempt," (at 44) notwithstanding that the transfer occurs before the tax payment is due.

The authority of *Jersey City v. Montville* has been expressly reaffirmed in recent decisions. *Jabert*, *supra*, and *Shelton College*, *supra*. In *Jabert*, property which was owned and used for charitable purposes by The Salvation Army had been exempt for many years prior to 1949, under R.S. 54:4-3.6. Such ownership and use obtained on October 1, 1948. Soon thereafter, in November, 1958, title to the property was conveyed to the Jabert Operating Corporation, a non-exempt corporation. Jabert sued to set aside the assessment imposed for the year 1949. The Appellate Division held that the statutory requisites for exempt status were satisfied as of October 1, 1948 and "that fact established the status of the property as exempt for the entire year 1949." 16 N.J. Super., at 509. Thereafter, by L. 1949, c. 144 (N.J.S.A. 54:4-63.26 *et seq.*) the Legislature afforded relief to allow a municipality to tax property which was exempt on October 1st and later passes into the hands of a non-exempt owner.

In *Shelton College*, *supra*, property was acquired by a tax exempt college on February 26, 1954. The court held that the property was taxable for the entire year

of 1954, since it was taxable on October 1st in the pre-tax year. No exemption was allowed for the period of the tax year following acquisition by the non-exempt owner. The court noted that the Legislature, by L. 1949, c. 144, (N.J.S.A. 54:4-63.26 *et seq.*) authorized a municipality to tax property which was exempt on October 1st of the pre-tax year but is transferred thereafter to a non-exempt owner. The court found that the Legislature's failure to afford relief in the converse situation—a transfer from a taxable to an exempt owner—was a reaffirmation of the rule of *Montville*, a rule which has been followed for many years.

While there are a number of statutory provisions which permit changes in assessments after the October 1st date, these do not concern changes in exempt status, except for N.J.S.A. 54:4-63.26 *et seq.*, noted above. Improvements constructed after October 1st of the pre-tax year are taxable under the Added Assessment Law, N.J.S.A. 54:4-63.1 to 63.11. Assessments not made on October 1st may also be added under the Omitted Assessment Law (N.J.S.A. 54:4-63.12 *et seq.*) *See: Appeal of N.Y. State Realty Terminal Co.*, 21 N.J. 90, 96 (1956). Where improvements to real property have been destroyed, demolished or otherwise materially depreciated between October 1st and January 1st of the following year, a reduction in the assessment can be made by the assessor. N.J.S.A. 54:4-35.1. Significantly, however, no change in assessment is authorized if the depreciation in value occurs after January 1st of the tax year.

But there is no general statutory provision which allows a change from non-exempt to exempt status for non-governmental property owners after the October 1st assessing date. This is contrasted with the provisions of N.J.S.A. 54:4-63.26, *et seq.* It is also contrasted with the allowance of an exemption upon the acquisition of property through condemnation by the State or the United States Government. *See: Edgewater v. Corn Products Refining Co.*, 136 N.J.L. 220 (Sup. Ct. 1947), modified and affirmed, 136 N.J.L. 664 (E. & A. 1948); *New Jersey Highway Authority v. Henry A. Raemisch Coal Co.*, 40 N.J. Super. 355 (Law Div. 1956); *Milmar Estate v. Borough of Fort Lee*, 36 N.J. Super. 241 (App. Div. 1955); Atty. Gen'l. Opinion of June 27, 1957, P-23, 1956-1957 *Opinions of the Attorney General of N. J.* 163.

Taxes validly assessed on real property become a lien on January 1 of the tax year. N.J.S.A. 54:5-6. Procedurally, N.J.S.A. 54:4-4.4 provides that the time for filing statements of exemption is on or before November 1 of the pre-tax year and that a copy of exemption statements shall be filed by the assessor with the county board of taxation "on or before January 10 following." To allow an exemption for all or part of the tax year in which the exemption is created would require a legislative intent to overcome the pre-existing statutes and case law on the subject. This legislative intent cannot be found simply in the provision that "This act shall take effect immediately." The provision normally does not mean that the *exemption* shall take effect immediately but that the *act* shall take effect immediately, particularly where the act does not waive the requirement for filing exemption statements on or before November 1st of the pre-tax year. A statute normally has a prospective effect only, unless a clear intention to the contrary is therein expressed. *Wittes v. Repko*, 107 N.J. Eq. 132 (E. & A. 1930); *Neel v. Ball*, 6 N.J. 546, 551 (1951); *Harrington Co. v. Chopke*, 110 N.J. Eq. 574 (E. & A. 1932).

In *Lakewood Judean Lodge v. Township of Lakewood*, 25 N.J. Misc. 421 (Div. of Tax Appeals 1947), cited with approval in *Jabert, supra*, 16 N.J. Super. at 509, an analogous act was construed. There, a municipality had assessed property which had been owned by a municipality on October 1, 1944 and was thereafter, on October 25,

1944, transferred to a non-exempt individual. The municipality contended that the property became taxable under L. 1945, c. 137 (N.J.S.A. 54:4-63.2). This law provided, in part, that property sold by a municipality after October 1st in the pre-tax year can be included in an "added assessment list." The act was approved on April 10, 1945 and provided: "This act shall take effect immediately." Nevertheless, it was there held that since the act became effective on April 10, 1945, it was prospective only and could not affect an assessment made as of October 1st, 1944.

Accordingly, it is our opinion that a statute which grants an exemption from taxation following October 1st of the pre-tax year will not effectively grant such exemption for the ensuing tax year, or part thereof, unless the Legislature clearly expresses its intent to make such exemption effective notwithstanding the prior taxable status of the property.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: THEODORE I. BOTTER
Deputy Attorney General

JUNE 3, 1960

CHRISTOPHER H. RILEY, *Director*
Division of Shell Fisheries
Department of Conservation
and Economic Development
230 West State Street
Trenton, New Jersey

FORMAL OPINION 1960—No. 17

DEAR DIRECTOR RILEY:

You have requested an opinion defining the circumstances under which the State acting through the successors to the former riparian commissioners may make a riparian grant or lease to lands under tidewaters on which are found natural oyster beds.

The power to lease lands of the State beneath tidal waters for the planting and cultivation of oysters and clams was formerly exercised by the Board of Shell Fisheries. R.S. 50:1-23. With reference to the Board, R.S. 50:1-24 provided:

"The power granted by this title to the board to lease lands under the tidal waters of this state for the planting and culture of shellfish is exclusive, and no other state agency may, in the name of the state or otherwise, give, grant or convey to any person the exclusive right to plant or take shellfish from any of such waters; and no grant or lease of lands under tidewater, whereon there are natural oyster beds, shall be made by any other state agency except for the purpose of building wharves, bulkheads or piers."

This power was transferred by Laws of 1945, c. 22, § 19, N.J.S.A. 13:1A-19 to the Division of Shell Fisheries in the former State Department of Conservation and in