SUPREME COURT OF APPEALS OF WEST VIRGINIA

Apollo Civic Theatre, Inc. v. State Tax Commissioner of West Virginia

223 W. Va. 79 (2008) (W. Va. Ct. App. 2008) · No. No. 33889 · Decided December 10, 2008

SUMMARY

The Supreme Court of Appeals of West Virginia held that Apollo Civic Theatre, Inc., a qualifying nonprofit organization, was exempt from collecting consumer sales tax on admission tickets under West Virginia Code § 11-15-11. The court interpreted "health and fitness" to include mental and spiritual well-being, rejecting the Tax Commissioner's narrower regulatory interpretation. The court also held that donated time and services from community members could be included as organizational "support" for purposes of the use-tax exemption under West Virginia Code § 11-15-9(a)(6).

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Starcher; Senior Status Justice McHugh
JURISDICTION	West Virginia
DECIDED	December 10, 2008
DOCKET	No. 33889
DISPOSITION	reversed
PROCEDURAL POSTURE	Taxpayer appealed the Berkeley County Circuit Court's order sustaining state consumer sales tax and use tax assessments issued by the State Tax Commissioner.
STANDARD OF REVIEW	Interpretation of a statute or administrative rule or regulation is a purely legal question subject to de novo review, with appropriate consideration of agency expertise and the inherent persuasiveness of the agency's interpretation.
PRECEDENTIAL VALUE	Published opinion; precedential under West Virginia law
PARTIES	Apollo Civic Theatre, Inc. v. State Tax Commissioner of West Virginia

TOPICS

sales and use tax | tax exempt organizations | statutory interpretation | administrative law | appellate procedure

PRACTICE AREAS

sales and use taxation | administrative law | statutory interpretation | tax-exempt organizations

QUESTIONS PRESENTED

1. Whether the statutory phrase "health and fitness" in West Virginia Code section 11-15-11(b)(1) is limited to physical health and fitness, or also includes mental and spiritual health and fitness, for purposes of the nonprofit consumer sales tax exemption.
2. Whether donated time and services provided by community members may be included as an organization's "support" under West Virginia Code section 11-15-9(a)(6) when determining eligibility for the charitable organization use-tax exemption.
3. Whether the circuit court erred in sustaining the Tax Commissioner's consumer sales tax and use tax assessments.

HOLDINGS

1. The terms "health and fitness" in West Virginia Code section 11-15-11(b)(1) are not restricted to physical health and fitness; they may include mental and spiritual health and fitness. Apollo's theatrical activities therefore qualified under the statutory exemption from consumer sales tax on admission tickets.
2. A charitable organization may include donations of time and services by members of the community as "support" under West Virginia Code section 11-15-9(a)(6) when establishing eligibility for the use-tax exemption.

KEY QUOTATIONS

> *"Accordingly, we hold that the terms "health and fitness" found in W.Va.Code, 11-15-11(b)(1) are not restricted to physical health and fitness of individuals, but may also include mental health and fitness and/or spiritual health and fitness."* (222)

> *"We therefore conclude that the Legislature intended that an expansive reading of W.Va. Code, 11-15-9(a)(6)(F), permits a charitable organization to include donations of services by members of the community as "support.""* (224)

FACTUAL BACKGROUND

Apollo Civic Theatre is a nonprofit community theater organized to promote amateur dramatics and provide theatrical programs to the public. It charged admission for productions, offered discounted and free tickets to persons with financial need and certain community groups, and received substantial donated goods, services, and volunteer labor. Apollo did not collect sales tax on admission tickets from 2001 through 2003 and did not pay use tax on goods and services used in its operations from 1999 through 2003. Following an audit, the Tax Commissioner assessed sales and use taxes, concluding that Apollo did not qualify for the applicable statutory exemptions.

PROCEDURAL HISTORY

After an audit, the Tax Commissioner assessed Apollo Civic Theatre $11,778 in consumer sales tax plus interest on admission-ticket sales and $4,039 in use tax plus interest on goods and services used in its operations. The Office of Tax Appeals affirmed both assessments on June 1, 2006. The Berkeley County Circuit Court affirmed the assessments in a final order dated August 7, 2007. Apollo appealed to the Supreme Court of Appeals of West Virginia, which reversed.

DISPOSITION

reversed

CASES CITED

- Appalachian Power Co. v. State Tax Department of West Virginia, 195 W. Va. 573, 466 S.E.2d 424 (1995)
- In re Hillcrest Memorial Gardens, Inc., 146 W. Va. 337, 119 S.E.2d 753 (1961)
- CB&T Operations Co., Inc. v. Tax Commissioner, 211 W. Va. 198, 564 S.E.2d 408 (2002)
- Security National Bank & Trust Co. v. First West Virginia Bancorp, Inc., 166 W. Va. 775, 277 S.E.2d 613 (1981)
- State ex rel. Daily Gazette Co. v. County Court, 137 W. Va. 127, 70 S.E.2d 260 (1952)
- Maikotter v. University of West Virginia Board of Trustees, 206 W. Va. 691, 527 S.E.2d 802 (1999)
- Rowe v. West Virginia Department of Corrections, 170 W. Va. 230, 292 S.E.2d 650 (1982)
- Anderson & Anderson Contractors, Inc. v. Latimer, 162 W. Va. 803, 257 S.E.2d 878 (1979)
- Consumer Advocate Division v. Public Service Commission, 182 W. Va. 152, 386 S.E.2d 650 (1989)
- CNG Transmission Corp. v. Craig, 211 W. Va. 170, 564 S.E.2d 167 (2002)
- Miners in General Group v. Hix, 123 W. Va. 637, 17 S.E.2d 810 (1941)
- State ex rel. Cohen v. Manchin, 175 W. Va. 525, 336 S.E.2d 171 (1984)
- Davis Memorial Hospital v. West Virginia State Tax Commissioner, 671 S.E.2d 682 (2008)
- State Human Rights Commission v. Pauley, 158 W. Va. 495, 212 S.E.2d 77 (1975)
- Andy Brothers Tire Co., Inc. v. West Virginia State Tax Commissioner, 160 W. Va. 144, 233 S.E.2d 134 (1977)
- Brockway Glass Co. v. Caryl, 183 W. Va. 122, 394 S.E.2d 524 (1990)