



condominium units should be classified as residential property and assessed at 25 percent of their value for property tax purposes rather than being classified as industrial and commercial property and assessed at 40 percent of their value.

Anderson County, the City of Oak Ridge, and the Tennessee State Board of Equalization (collectively referred to as "Appellant") raise two issues on appeal. We re-state them as follows:

I. The Trial Court erred in denying the Appellant's motion to dismiss for lack of jurisdiction because the Appellee failed to exhaust its administrative remedies before the State Board of Equalization.

II. The Trial erred in determining that the Appellee's condominiums should be classified as residential property rather than industrial and commercial property.

The facts were stipulated to by the parties and are not in dispute. The Appellee is a Tennessee Corporation with its office and principal place of business in Oak Ridge, in which it developed a condominium project consisting of 86 condominium units. In connection with its development of the condominium units, the Appellee filed the necessary instruments to effect a horizontal property regime. The condominium project consisted of 19 buildings, each containing four to six individual condominium units.

The entire development was structured pursuant to the Horizontal Property Act.<sup>1</sup> Each unit was offered for sale separately as a single unit residence. Six condominium units have been sold. The remaining 80 units, which continue to be offered for sale as separate residential units, are being rented.<sup>2</sup>

The Anderson County Tax Assessor determined that the units owned by the Appellee should be classified as industrial and commercial property and imposed an assessment of 40 percent of the value of the property for determining the property taxes. The Tax Assessor also determined that the six condominium units that were individually owned should be classified as residential property and imposed an assessment of 25 percent of the value of the property for determining their property taxes.

All 86 condominium units were constructed in the same manner in terms of appearance, size, location, construction or by any other objective standard. They were all two bedroom condominium units. The only difference was the ownership of the unit.

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<sup>1</sup> T. C. A. 66-27-101 et seq.

<sup>2</sup> The Appellee's complaint alleges that "in order to reduce the costs of carrying the Units and to provide for the occupancy of the Units while they are awaiting sale, those Units that have not been sold are made available for occupancy by others on a nightly, week to week, month to month or other short term basis."

On September 28, 1992, the Appellee filed an appeal of its property tax assessment to the Tennessee State Board of Equalization. An Administrative Law Judge for the State Board of Equalization notified the parties that the appeal would be heard on February 17, 1993. The Appellee withdrew its appeal before the matter was heard and filed suit in Anderson County Chancery Court seeking relief.

The Appellant contends that the Trial Court erred in denying the motion to dismiss for lack of jurisdiction because T. C. A. 67-5-1501 grants the State Board of Equalization jurisdiction over the valuation, classification and assessment of property,<sup>3</sup> and the Appellee failed to exhaust this administrative remedy. "It is a settled rule in this State and is the general rule in other jurisdictions that 'where an administrative remedy is provided by statute, relief must be sought by exhausting this remedy before the courts will act.'" Bracey v. Woods, 571 S.W2d 828 (Tenn. 1978).

However, there is a well-established exception to the above stated rule that allows a party to bring suit in a state court and by-pass the administrative process when only legal issues are in dispute. "[A] taxpayer ought not to be required in all cases to go through boards of equalization or other administrative procedures in order to raise strictly legal

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<sup>3</sup> "The state board of equalization has jurisdiction over the valuation, classification and assessment of all properties in the state." T. C. A. 67-5-1501.

issues." Fentress County Bank v. Holt, 535 S.W2d 854 (Tenn. 1976). It is undisputed that only legal issues are at issue. Thus, the Appellee was not required to exhaust its administrative remedies. The Anderson County Chancery Court had jurisdiction to resolve the case.

The Appellant next claims that the Trial Court erred in finding that the condominiums should be taxed as residential property rather than industrial and commercial property. Under the Tennessee Constitution, real property is subclassified into four categories: public utility, industrial and commercial, residential and farm Tennessee Constitution, Article II, Section 28. The Constitution further requires that commercial real property be assessed at 40 percent of its appraised value, while residential property is assessed at 25 percent of its appraised value. The Constitution does not define the property subclassifications other than to note that "residential property containing two (2) or more rental units is hereby defined as industrial and commercial property."<sup>4</sup>

The Appellee contends that since the Horizontal Property Act assesses condominiums individually,<sup>5</sup> each

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<sup>4</sup> See also T.C.A. 67-5-501 which provides that "[all] real property which is used, or held for use, for dwelling purposes which contains two (2) or more rental units is hereby defined and shall be classified as 'industrial and commercial property.'"

<sup>5</sup> The Horizontal Property Act provides in part as follows:

Taxes, assessments and other charges of any taxing unit of this state, or of any political subdivision, or any other taxing or assessing authority shall be assessed against and collected

condominium should be treated as a separate piece of property, just as a single family residence is treated as a separate piece of property. According to the Appellee, once the determination is made that a condominium is a separate piece of property, then application of that determination would preclude a finding that one unit, even if rented, contains two or more rental units. The Trial Court agreed with the Appellee's position and held as follows:

The Court believes that these condominium units should not be treated differently from single family residential units, which are assessed at 25% of value without regard to their ownership. These are individual condominium units and do not constitute two or more rental units as a tax entity or a tax parcel, and they should not be treated differently from those condominium units that have been sold, all being the same residential units for tax purposes and the assessment should be at 25% of value.

The Appellant asserts that the Constitution and the Horizontal Property Act should not be read so narrowly. The Appellant relies upon a decision by the State Board of Equalization in support of its position. The Board in that case held that owners who rent multiple condominium units, built pursuant to the Horizontal Property Act, should have their property classified as commercial. The Board reasoned as follows:

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on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole.

T. C. A. 66-27-120(a).

[T]he [Horizontal Property] Act requires separate assessment of condominium units but does not explicitly address the issue of classification. The state Constitution, on the other hand, clearly intends that income producing property be classified as commercial even when it is used for dwelling purposes, if the property contains more than a single rental unit. We should avoid a construction of the Horizontal Property Act which places it at odds with the state Constitution. Tenn. Code Ann. § 66-27-120 requires separate assessment of condominium units primarily to relieve individual condominium owners who pay their taxes of the possibility of forfeiting their interests when the building or property as a whole is sold for delinquent taxes. This purpose can be achieved without retreating from the higher classification mandated for multi-unit rental property under the Constitution.

An owner of a single-family dwelling may rent the property to another without losing the residential classification. The owner of a single condominium should be treated similarly, but special circumstances are presented here. Multiple condominium units, in this case in the same building under common ownership, are here being rented to others as "apartments." Such circumstances fall clearly within the constitutional intent to classify income producing property as commercial.

In Re Powers and Associates, a decision by the Tennessee State Board of Equalization (October 6, 1988).

We acknowledge that both parties' positions are well reasoned; however, fundamental fairness leads us to the conclusion that the Appellee's condominium units should be classified as industrial and commercial property. The Horizontal Property Act should not be read to provide condominium renters a safe haven from the higher tax rate. As long as two or more condominium units are being used as rental units, the property will be classified as commercial. Our decision falls clearly

within the constitutional intent to classify income producing property as commercial.

For the foregoing reasons the judgment of the Trial Court is vacated and the cause remanded for proceedings not inconsistent with this opinion. Costs of appeal are adjudged one-half against the Appellant and one-half against the Appellee.

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Houston M Goddard, P. J.

CONCUR:

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Don T. McMurray, J.

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Charles D. Susano, Jr., J.