

Limited Liability Companies Not Eligible for Real Estate Tax Exemption in Massachusetts

As expected, the Massachusetts Supreme Judicial Court has ruled that limited liability companies do not qualify for the charitable exemption from real and personal property taxes. LLCs do not fall within the definition of a “charitable organization” for the purposes of Massachusetts General Laws, Chapter 59, § 5, clause Third because they are neither corporations nor charitable trusts.

The SJC’s ruling in *CFM Buckley/North, LLC vs. Board of Assessors of Greenfield*, *John Adams Nursing Home, LLC vs. Board of Assessors of Quincy*, and *Longmeadow of Taunton, LLC vs. Board of Assessors of Taunton* issued on March 16, 2009 and affirmed the rulings of the defendant Boards of Assessors and the Appellate Tax Board.

M.G.L. c. 59 § 5, clause Third provides an exemption from real and personal property taxes to “charitable organizations” that are *incorporated* in the commonwealth or trusts created for charitable purposes. In *Buckley*, the sole member of each of the limited liability companies claiming the tax exemption was a tax-exempt corporation. The court noted that a limited liability company is specifically defined to be an “unincorporated organization” under the Massachusetts Limited Liability Company Act, thereby lacking the legal form necessary to qualify for tax exemption. The SJC rejected the taxpayer’s argument that the function of the organization, rather than the form, should determine whether the organization is entitled to the charitable exemption. The SJC similarly rejected the argument that the property was tax exempt because it was held “in trust” for a qualifying charitable organization (*i.e.*, the sole member of the limited liability company) because, in these cases, the sole member did not itself own or occupy the real property.

Ropes & Gray LLP regularly advises non-profits on tax matters, including real estate tax issues. We are experienced in structuring real property ownership and use arrangements to preserve the charitable exemption from real estate taxes—including alternatives to limited liability companies—and would be pleased to advise on any existing or proposed arrangements. If you have any questions concerning the recent SJC ruling or real estate tax issues and their potential effect on your institution, or if you have other related questions, please do not hesitate to contact your regular Ropes & Gray advisor.