

Property Tax

Litigating State Property Tax Cases In Federal Court: A Case Study Of *AMCC v. Onslow County And Craven County*

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Practitioners of property tax have long understood that access to the federal courts to litigate questions concerning state or county-level property taxes is substantially restricted by the federal Tax Injunction Act. However, as noted in the May 2010 Tax Report article about the *Levin v. Commerce Energy* case pending before the United States Supreme Court, there are opportunities for creative lawyers to get state tax cases into federal court. This article presents a case study in which a county property tax matter was successfully challenged in federal court without implicating the Tax Injunction Act.

In *Atlantic Marine Corps Communities LLC v. Onslow County, North Carolina and Craven County, North Carolina*, 497 F.Supp. 2d 743, 2007 WL 2164447 (E.D.N.C. 2007), the Court ruled that the United States does not relinquish exclusive federal jurisdiction over land on military installations when it enters into a public/private joint venture to construct, renovate and manage military housing within those areas. Accordingly, the Court ruled that the counties could not impose property taxes on the newly constructed military housing located aboard military bases under exclusive federal jurisdiction without running afoul of Article I, Section 8, Clause 17 of the United States Constitution – commonly referred to as the “Enclave Clause.”

In a 32-page order, Senior U.S. District Court Judge Malcolm J. Howard ruled that military housing being constructed, renovated and managed by Atlantic

Marine Corps Communities LLC (“AMCC”) aboard MCB Camp Lejeune, MCAS New River, and MCAS Cherry Point in North Carolina was located in areas of exclusive federal jurisdiction, and that the 50-year ground lease and transfer of the improvements on the land from the government to AMCC did not destroy the U.S. Government’s exclusive federal jurisdiction.

AMCC’s project aboard these Marine Corps installations is part of the Military Housing Privatization Initiative (“MHPI”), a program created by Congress in 1996 to improve the on-base housing at military installations through the use of public/private partnerships. The MHPI (10 U.S.C. § 2871, *et seq.*) gives authority to the Secretaries of the Armed Forces to enter into joint ventures with nongovernmental entities “for the acquisition or construction of housing units suitable for use as military family housing or as military unaccompanied housing.” See 10 U.S.C. § 2875.

According to the Department of Defense, through June 2007, the MHPI has been used to construct or renovate nearly 150,000 single family homes, town homes, or condominiums at over 75 military installations in 35 states and the District of Columbia. The website for the Office of the Deputy Under Secretary of Defense for Installations and Equipment indicates that an additional 47,000 housing units in 24 states and the District of Columbia are either pending or in the planning stages through FY 2009 pursuant to the MHPI.

Shortly after Actus Lend Lease Holdings LLC (“Actus”) was selected by the Navy through a competitive bidding process in the summer of 2005 for Phase I of the project aboard MCB Camp Lejeune, MCAS New River and MCAS Cherry Point (along with Stewart Terrace in New York), officials in Onslow County and Craven County, North Carolina, informed Actus of the counties’ intent to assess property taxes against AMCC’s personal property on the Marine Corps installations. North Carolina law allows for state taxation of leasehold interests as personal property.

In March 2006, AMCC filed a civil action in the United States District Court for the Eastern District of North Carolina seeking a declaratory judgment that the Marine Corps installations were under exclusive federal jurisdiction and that the Counties did not have the power or authority to enforce state property tax laws on federally-sovereign land. The Counties filed

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counterclaims seeking a declaratory judgment that the State of North Carolina never ceded exclusive jurisdiction over these Marine Corps installations to the federal government in the first place. Alternatively, the Counties sought a declaratory judgment that if the State had ceded exclusive jurisdiction over the installations, this jurisdiction was lost when the government entered into a 50-year ground lease and transferred ownership of the improvements on the land to AMCC pursuant to the MHPI.

In March 2007, AMCC and the Counties filed cross-motions for summary judgment. After extensive briefing by the parties, and after a June 14, 2007 hearing, Judge Howard entered an order on July 26, 2007 granting AMCC's motion for summary judgment and denying the Counties' motion.

The Court began by addressing the argument raised in the Counties' first counterclaim, namely that "[t]he North Carolina General Assembly never consented to the acquisition of the Marine Corps Lands by the federal government for the purposes of establishing Marine Corps training areas." AMCC at *5. In 1907, the General Assembly enacted a statute which read, in pertinent part:

The consent of the state is hereby given, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the state required for the sites for customhouses, courthouses, postoffices, arsenals or other public buildings whatever, or for any other purposes of the government.

N.C. Gen. Stat. § 104-7 (1943). In their first counterclaim, the Counties argued that the phrase "or for any other purposes of the government" must be read within the context of the specific references to buildings, such that the statute consented to federal acquisition of land only "for purposes associated with federal public buildings." AMCC at *6. The Counties argued that the properties at issue, which were acquired by the United States by condemnation in 1941 for purposes of establishing "Marine Corps training areas," fell outside the limited, public buildings-only scope of the 1907 Act. Lacking the consent of the General Assembly to the

acquisition of lands for use as a military training area, the Counties contended that the federal government never established exclusive federal jurisdiction over these installations.

The Court disagreed, and took "significant guidance" from a 1991 decision of the North Carolina Supreme Court. AMCC at *6. In *State v. Smith*, 328 N.C. 161, 400 S.E.2d 405 (1991), the North Carolina Supreme Court considered a criminal case brought under North Carolina arising out of three murders which occurred aboard MCB Camp Lejeune. The Supreme Court vacated the indictment returned by an Onslow County grand jury, finding that the crimes occurred at MCB Camp Lejeune, which the Court found was an area of exclusive federal jurisdiction. Judge Howard rejected the Counties' argument that *State v. Smith* should be confined only to criminal prosecutions. "Though *State v. Smith* was a criminal case, the court's analysis concerned an omnibus jurisdictional issue that applies equally in civil and criminal cases." AMCC at *6.

The Court further rejected the Counties' contention that the language of Section 104-7 is ambiguous, and can only be understood through the application of several canons of statutory interpretation. The Court rejected the Counties' reliance on *expressio unius est exclusio alterius*, *eiusdem generis* and *noscitur a sociis*. "[T]he court finds no relevant ambiguity in § 104-7. The phrase 'or for any other purposes of the government' was a broad catch-all provision used by the North Carolina General Assembly to offer a broad grant of authority to the federal government."¹ AMCC at 7.

Having found that the United States established exclusive federal jurisdiction over the relevant properties in 1941, the Court next addressed the Counties' second counterclaim. "The question presented here," the Court wrote, "is whether a public/private partnership of the type entered into by Actus and the federal government brings about a relinquishment of exclusive federal

¹ Judge Howard's rejection of the Counties' *eiusdem generis* argument was prescient. In a more recent United States Supreme Court decision, *Ali v. Federal Bureau of Prisons*, No. 06-9130 (January 22, 2008), the Court reversed a Fourth Circuit opinion applying the *eiusdem generis* principle to interpret "any officer of customs or excise or any other law enforcement officer" as applying only to officers enforcing customs or excise laws. On a 5-4 vote, the high Court ruled that the broad phrase "or any other law enforcement officer" covers all law enforcement officers, not just customs or excise officers.

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jurisdiction.” *AMCC* at *10. The Counties argued that the mechanisms of the MHPI – a 50-year ground lease between the government and AMCC and a transfer of ownership of the improvements on the land from the government to AMCC during the life of the ground lease – triggered the so-called “springing reversion clause” in Section 104-7. The relevant language of Section 104-7 reads:

So long as the said lands shall remain the property of the United States when acquired as foresaid, and no longer, the same shall be and continue exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of the State.

N.C. Gen. Stat. § 104-7 (1943). The Counties argued that the mechanisms of the MHPI were, as the Court summarized the argument, “the equivalent of a sale, transferring equitable title to [AMCC] and making the Marine Corps Lands no longer the ‘property’ of the United States, thereby rendering the Lands and the real and personal property thereon subject to local taxation.” *AMCC* at *10.

The Court identified “two lines of inquiry suggested by the case law: one focused on **purpose**; the other on **ownership** or **control**.” *Id.* Some state consent and cession of jurisdiction statutes have given the state’s consent and cession of jurisdiction only when the land is used for a particular purpose. Noting that the language of Section 104-7 places no restrictions on the government’s use of the lands, such cases, the Court wrote, “ha[ve] no application here.” *Id.* at *11. Rather, the Court wrote, “[t]he reversion clause in § 104-7 speaks directly and forcefully to the issue of ownership.” *Id.*

The Counties argued that two specific U.S. Supreme Court cases should guide the Court’s analysis: *Baltimore Shipbuilding & Dry Dock Co. v. Baltimore*, 195 U.S. 375 (1904) and *S.R.A., Inc. v. Minnesota*, 327 U.S. 558 (1946). In both cases, the United States sold land which had been under exclusive federal jurisdiction to private parties, but each sale contained some conditions which could cause the land to revert to the government. In *Baltimore Shipbuilding*, there were contractual provisions which caused the land to revert

to the government in the event that the government was not permitted to use the dry dock to be constructed on the land. In *S.R.A.*, the government sold a former post office to a private party under an installment sales contract. The U.S. Supreme Court found that in *S.R.A.* the government was “in the position of a mortgagee,” and held that exclusive federal jurisdiction had been terminated upon the transfer of the property to the private buyer.

The Court found that *Humble Pipe Line Co. v. Waggoner*, 376 U.S. 369 (1964), a case cited by AMCC, “bears by far the greater likeness” to the instant case. *AMCC* at *12. In *Humble Pipe Line*, the federal government leased a portion of Barksdale AFB in Louisiana to a private oil and gas company for the construction of an oil pipeline. A parish in the State of Louisiana had sought to assess property tax on the personal property of the pipeline company which was within the leased area, arguing that by entering into a 75-year ground lease the federal government had relinquished its exclusive federal jurisdiction over the area. A unanimous U.S. Supreme Court disagreed, holding that despite the lease, the federal government maintained “primary jurisdiction and control” over the land.

Likewise, the Court here found that under the Ground Lease between AMCC and the federal government, the government maintained primary jurisdiction and control over the land “as that phrase was used in *Humble Pipe Line*.”

Under the terms of the Ground Lease, the United States will be the sole owner of the land and the improvements at the end of the lease term. [AMCC] is limited in its use of the subject lands to activities spelled out in the Ground Lease. [AMCC] has significant obligations pursuant to the Project, and the government has corresponding rights of termination and repossession in the event [AMCC]’s performance proves unsatisfactory. Combined with these important “control” factors, both the Marine Corps Lands as a whole and the specific properties to be managed by [AMCC] continue to be used for military purposes attendant to

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the original cession of jurisdiction and acceptance by the United States.

AMCC at *12.

The Counties had also noted that, in its solicitation for the Project, the Navy had required all applicants to “assume that full property taxes and/or possessory taxes will be assessed” on the property under the Project. *Id.* at *12. The Court rejected the Counties’ argument that this language had waived the government’s exclusive federal jurisdiction over the subject lands. Likewise, the Court determined that language in the Operating Agreement which allows AMCC to rent its housing units to non-military personnel if it is unable to find any military personnel to fill the unit was a “remote possibility” that “does nothing to cause this court to question the decision it reaches today.”

The Court entered a declaratory judgment that the subject areas of MCB Camp Lejeune, MCAS New River, and MCAS Cherry Point are under exclusive federal jurisdiction, and that except where authorized by federal statute, the Counties do not have the lawful authority to enforce state laws, excepting service of civil and criminal process, on these subject lands. The Court further declared that the MHPI does not authorize the States to enforce property tax laws, and that all of the real and personal property related to AMCC’s management, construction and renovation of privatized military base housing pursuant to the MHPI is not subject to taxation by the Counties. Finally, the Court ordered that the Counties “are prohibited from listing, appraising, assessing, or taxing any real or personal property related to [AMCC]’s construction and renovation of military base housing pursuant to [MHPI].” *AMCC* at *13.

This case is instructive in situations where state or local taxation implicates federally-protected interests. More broadly, however, it is an illustration of how the intersection of federal rights and state taxing power may give rise to arguments in favor of bringing declaratory judgment actions in federal court, rather than litigating through state courts or administrative processes.

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