

BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION

UNIVERSITY OF NEW ORLEANS
RESEARCH AND TECHNOLOGY
FOUNDATION, INC.

DOCKET NO. L01362

Petitioner

versus

NORMAN WHITE CHIEF FINANCIAL
OFFICER AND DIRECTOR OF FINANCE
CITY OF NEW ORLEANS; ERROLL G.
WILLIAMS, ASSESSOR, ORLEANS
PARISH; AND LAWRENCE E.
CHEHARDY, CHAIRMAN, LOUISIANA
TAX COMMISSION

Respondents

CONSOLIDATED WITH

UNIVERSITY OF NEW ORLEANS
RESEARCH AND TECHNOLOGY
FOUNDATION, INC.

DOCKET NO. L01634

Petitioner

versus

NORMAN WHITE CHIEF FINANCIAL
OFFICER AND DIRECTOR OF FINANCE
CITY OF NEW ORLEANS; ERROLL G.
WILLIAMS, ASSESSOR, ORLEANS
PARISH; AND LAWRENCE E.
CHEHARDY, CHAIRMAN, LOUISIANA
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Respondents

ORDER AND REASONS

On January 31, 2024, this matter came before the Board for hearing on the Merits. Presiding at the hearing was Local Tax Judge Cade R. Cole. Present before the Board were Cheryl Kornick, Tyler Trew, and Robert Angelico, attorneys for the University of New Orleans Research and Technology Foundation, Inc. (the “Foundation”), Reese Williamson and Henry Dahlen, attorneys for Erroll G. Williams, Assessor, Orleans Parish (“Assessor”), James H. Gilbert, attorney for the Orleans

Parish School Board (“OPSB”), and James. M. Roquemore, attorney for the City of New Orleans (the “City”). Lawrence E. Chehardy, Chairman of the Louisiana Tax Commission (“LTC”) waived appearance at the hearing. At the conclusion of the hearing, the Board took the matter under advisement. The Board now rules as follows.

Facts

The Foundation seeks to recover *ad valorem* property taxes paid under protest with respect to four buildings, bearing the municipal addresses of: 2285 Lakeshore Drive, the Information Technology Center Building #4 (the “ITC #4 Building”); 2219 Lakeshore Drive (the “ITC #1 Building”); 2253 Lakeshore Drive (the “Parking Garage”); and 2021 Lakeshore Drive, the Advanced Technology Center (the “ATC Building”) (collectively, the “Property”). The Property is a part of a larger complex, the University of New Orleans Research and Technology Park (the “R&T Park”). The Tax Years at issue in these consolidated matters are 2022 and 2023 (the “Tax Years”). Prior to the hearing, the parties resolved their dispute with respect to the Parking Garage. The ITC #1 Building, the ITC #4 Building, and the ATC Building remain in dispute.

The Foundation asserts that the Property is public property used for public purposes and exempt under La. Const. Art. VII, § 21(A) (the “21(A) Exemption”). The Property at issue is owned by the Foundation. The Foundation is a privately-owned 501(C)(3) nonprofit corporation. The Foundation exists separately from the University of New Orleans (“UNO”). UNO is a public entity. UNO leased the underlying land to the Foundation on January 23, 1998, for a term of 99 years.

The Foundation claims that the leases support the public purpose for which the R&T Park was established. The Foundation asserts that by facilitating relationships between its tenants and UNO, it is promoting the development of research, technology, and economic opportunities. Furthermore, the Foundation maintains that its tenants’ activities also further these goals and support UNO.

The Foundation put forth the testimony of its Chief Executive Officer, Rebecca Conwell. Ms. Conwell has overall responsibility for executing the Foundation’s

mission. She reports to the Chair of the Foundation's Executive Committee. The Foundation has seven employees, all of whom report to her, or to a Vice President for Innovation who reports to her. The Foundation exists solely to benefit the University. The Foundation is intended to enhance education, research opportunities, and collaborations between tenants and UNO faculty. Ms. Conwell testified that collaboration with private entities can provide opportunities for internships, employment, and funding through grants or other means. Ms. Conwell's testimony is supported by the recitation of the Foundation's purpose in its Articles of Incorporation. Moreover, she testified that the Foundation operates exclusively as an extension of UNO.

Ms. Conwell oversees the recruitment of tenants. Generally, recruitment begins with a corporate realtor bringing a potential tenant to her attention. Ms. Conwell conducts initial screening. If she sees a good connection, then she will organize discussions with UNO. In the last two years, she has hosted discussions of this type with engineering firms and the Dean of UNO's engineering school.

The screening process is rigorous. If the Foundation and UNO are satisfied that the potential tenant would be a good match, then the potential tenant is invited to fill out an application. Ms. Conwell stated that the application process has evolved over time. Currently, the Deans and the Provost review applications. She will wait for the Deans to provide a response in consultation with UNO faculty. If the response is positive, then the application goes to UNO's Research Council. Some potential tenants have been rejected because they did not fit with the purpose behind the R&T Park.

Considering Ms. Conwell's role in facilitating relationships and forging connections between the tenants and UNO, it is obvious that communicating with tenants is a large part of her work. A critical function she performs is to personally remove obstacles to collaboration between tenants and UNO. She takes action when she learns that collaboration or supportive activities have been or are impaired. The Assessor objected to Ms. Conwell's attempts to testify as to the specific activities of the tenants on hearsay grounds. In light of the Assessor's hearsay objections, the

Board considers Ms. Conwell's testimony about tenant activities only to the extent that it describes her first-hand observations or is based on the Foundation's business records.

ITC Building #1

ITC Building #1 was leased to: Eurofins Analytical Laboratories, Inc. ("Eurofins"); J.H. Russell Forwarding Company, Inc. ("J.H. Russell"); SCT Management Services, L3C, ("SCT"); and the City of New Orleans to house the N.O.P.D. crime laboratory ("N.O.P.D."). The Tax Years at issue in this case are 2022 and 2023, not 2021. However, the Rent Roll for the ITC Building #1 dated August 1, 2022 shows that the ITC Building's tenants were the same in 2022. Further, Ms. Conwell testified that the tenants were also the same in 2023, except for the departure of N.O.P.D.

ATC Building

In 2021, the ATC Building was leased to: Accenture Federal Services, LLC ("Accenture"); Answer ALS ("AALS"); HNTB Corporation ("HNTB"); the Institute of Women and Ethnic Studies ("IWES"); Nationwide IT Services ("NIT"); the New Orleans Regional Black Chamber of Commerce ("NORBCC"); Team Gleason Foundation ("Team Gleason"); Technology Associates, Inc. ("TAI"); and the Water Institute of the Gulf ("Water Institute"). In 2022, the ATC Building was leased to: General Dynamics Information Technology, Inc. ("GDI"); Team Gleason; the Hackett Group, LLC ("Hackett"); Senator James C. Harris, III; IWES; HNTB; TAI; Accenture; NORBCC; Answer ALS ("AALS"); Casey Moriarty; NIT; the Water Institute; Kissee & Company, CPA's ("Kissee"); Propeller; and the Foundation itself.

ITC #4 Building

During the Tax Years, the ITC #4 Building was leased exclusively to Hancock Whitney Bank ("Whitney").

Collaborative and Supportive Tenant Activities

Ms. Conwell's admissible testimony provided the Board with the following background on the tenants' businesses and examples of collaboration and activities supporting the R&T Park's exempt purpose.

Eurofins

Eurofins tests agricultural and food-based products for third parties. Ms. Conwell testified that Eurofins benefits UNO's Departments of Biology and Chemistry. She also testified that she works closely with Eurofins and that her contact there is a UNO alumni.

TAI

The Foundation introduced Minutes from a Faculty Advisory Meeting on August 26, 2008, at which meeting TAI's Application for lease was approved.¹ The Minutes describe a presentation by TAI's President, Mr. Anil Raj. Mr. Raj stated that being in the R&T Park would be beneficial to UNO in many areas: "research; technology development, applications and commercialization; adjunct appointments; the mentoring of students; hiring interns; and sponsor tank model testing."

Ms. Conwell testified that one of the key pieces of the renewable energy movement is environmental sciences. She stated that this includes understanding the impact that an offshore wind turbine will have on the water. She further testified that she believes that wind energy relates to TAI's activities at the Property. In the Minutes, Mr. Raj is said to have described TAI's business as providing "Maritime Solutions with Enhance Value."

AALS

Ms. Conwell testified that she has a personal relationship with AALS. She set up meetings between AALS and UNO's IT and data scientists to facilitate the mining of ALS patient data. Ms. Conwell was present at three out of five of these meetings. She said this venture would put UNO "on the map" for leveraging ALS patient data.

The Water Institute

Ms. Conwell testified that the Water Institute's activities relate to renewable wind energy and water-based wind turbines and that the Water Institute benefits UNO's Department of Environmental Sciences. She further testified that the

¹ Petitioner's Exhibit 18.

relationship between UNO and the Water Institute is probably the most robust that the Foundation has sponsored.

Kissee & Company, CPA's

Kissee is the outsourced CFO for the Foundation and UNO. During the Tax Years, Kissee had three UNO student interns. The interns worked on the Foundation's and UNO's accounts, and also for other clients. Kissee's occupancy of the Property supported UNO's finance curriculum. Kissee also supported the Foundation's financial operations with its CFO services. However, Kissee was not involved in any research or technology activities.

Whitney

Ms. Conwell asserted that the relationship with Whitney benefits the Departments of Biology and Chemistry. The Foundation introduced Whitney's Application and Lease into the record. No other applications or leases were offered.

The Whitney lease contains a provision entitled "Permitted Use," which states:

Tenant will use and occupy the Premises for administrative offices and applied research facilities (herein a "Permitted Use") and will not use the Premises for any other purpose without the prior written consent of Landlord. Prior to execution of Lease, an approved relationship with the University of New Orleans related to research and development endeavors is required for tenancy in the Research Park. To the best of its knowledge, Landlord represents that Tenant's intended use and business practices in the Premises will not violate the terms of any existing leases in the Research Park.

Ms. Conwell asserted that every lease with every tenant at the Property contains a provision similar in effect to the one quoted the above. She acknowledged some degree of variance in the exact wording and specifics of each such provision, but maintained that the effect would always be to constrain the use of the leased Property to activities that would further the public purpose of the R&T Park. Furthermore, the Whitney Lease, and all other leases, prohibit the tenants from subleasing the premises without the consent of the Foundation. Each tenant is required to describe a prospective sub-lessee's intended activities to the Foundation. The Foundation additionally has the right to withhold consent if the sublease does not impose the Permitted Use restrictions on the sub lessee.

The Whitney Application states:

The UNO R&T Park mission is to provide facilities for lease so as to encourage collaborations between companies and other entities with the University, primarily involving research and technology development. Tenants are expected to have, or be working to develop, collaborations with the University while they are in the Park. These can include such things as funding university research, teaming on government requests for proposals and contract work, hiring students as interns, purchasing professional services, assisting in teaching students, etc.

In Section 4, Proposed Activities of Tenant in Lease Space, Whitney stated its intent to use its lease for: “Customer and Line of Business support functions for large regional financial service company, IT, Distributed systems applications, Telecom management, accounting functions, analytical of various credits, training center, etc.”

In addition, Section 6 of the Whitney Application requires a list of “Current and/or Expected Relationships/Collaborations” with UNO. The following examples are provided to the applicant: “funding research; purchasing professional services; teaming on responses to grant/contract JRFP’s; hiring student interns; providing company members for UNO seminars, instructors/adjuncts; training and workforce development collaboration; business planning.”

Whitney’s response described funding for an Endowed Chair in Banking within UNO’s Department of Economics & Finance. It was further stated that the Chair will “serve an important academic and economic purpose as the banking industry continues to evolve.” Whitney also expressed a commitment to partnering with the UNO College of Business Administration to realize an expansion plan for the Department of Accounting.

Additionally, Whitney noted that it had hired interns for its Credit Analysis Department and trainees for its Commercial Credit Development Program. Further still, Whitney offered a Tuition Reimbursement program to “all full time associates who have completed one year of service the company.” Finally, in Section 7, Whitney stated that it had provided over \$7 million of financing for the development of the ATC. Although the Whitney Application is from 2014, Whitney’s supportive and collaborative activities have not changed.

Discussion

The Foundation asserts that the Property, which is leased to private, for-profit, commercial tenants is exempt from *ad valorem* property tax under the 21(A)

Exemption, which expressly applies to “public property used for public purposes.” The jurisprudence interpreting the 21(A) Exemption has created a two-part test. *See Bd. of Comm’rs of the Port of New Orleans v. City of New Orleans*, 2013–0881, p. 6 (La. App. 4 Cir. 2/26/14), 135 So.3d 821, 825 (“*Port of New Orleans I*”). The test asks whether the property is: (1) vested in or owned by the public; and (2) used for a public purpose. *Bd. of Comm’rs of Port of New Orleans v. City of New Orleans*, 2015-0768, p. 4 (La. App. 4 Cir. 3/16/16), 186 So.3d 1282, 1285 (“*Port of New Orleans II*”) (citing *Slay v. Louisiana Energy and Power Authority*, 473 So.2d 51, 53–54 (La. 1985)).

Furthermore, the Fourth Circuit, with which an appeal from this decision would lie, has noted that the 21(A) Exemption has broad language that evidences the framer’s regard for its simplicity and self-explanatory nature. *Port of New Orleans II*, 2015-0768, 4–5, 186 So.3d at 1285. Our law is that “primarily, the Legislature determines what is a public use, and when it has declared what may be so regulated, courts will not interfere except in cases of usurpation and abuse of authority.” *Administrators of the Tulane Education Fund v. Bd. of Assessors*, 38 La. Ann. 292, 297 (La. 1886).

In *Port of New Orleans, II*, the Fourth Circuit instructed that when public property is leased to for-profit, commercial tenants, trial courts should examine whether the specific activities conducted by the tenants serve a public purpose. *See Port of New Orleans II*, 2015-0768, p. 7, 186 So.3d at 1286 (citing *Port of New Orleans I*, 2013–0881, p. 10, 135 So.3d at 827). The fact that the activities of the tenants are engaged in for profit does not necessarily preclude those activities from serving a public purpose. *Port of New Orleans II*, 2015-0768, p. 5, 186 So.3d at 1285.

In *Port of New Orleans II*, the Court considered the public purpose contemplated by both the Port in leasing the property, and by the legislature in outlining the Port’s public mission. *Id.* That mission, as defined by the legislature, was to “regulate the commerce and traffic of the Port and Harbor of New Orleans, in such a manner as may, in its judgment, be best for the maintenance and development thereof.” *Port of New Orleans II*, 2015-0768, p. 6, 186 So.3d at 1286 (quoting La. R.S. 34:21(A)(1)). The Port leased its property to commercial entities. The leases were

authorized by a resolution of the Port's board after giving consideration to the needs of, and benefits to, the Port. Those commercial entities provided services necessary for the Port to be an attractive place for shipping and to be competitive with other ports.

In this case, like in *Port of New Orleans I* and *Port of New Orleans II*, the public purpose of the R&T Park has been declared by the legislature. La. R.S. 17:3389(a) states:

The legislature finds that development of research and development parks in association with public or regionally accredited independent universities in the state, with quality facilities for research and development, manufacturing of goods resulting from and related to research and development activities, and related support services and concerns, will benefit the citizens of Louisiana through improved scientific information and technology and through improved economic conditions and creation of jobs.

In addition, New Orleans' Code of Ordinances, Chapter 150 - Taxation, Article VI, Division 3, Section 150-538 states:

The council finds that development of a research and technology park, with quality facilities, ongoing research, technology and development, manufacturing of products related to technology and related support services and concerns, will benefit the citizens of the city through improved economic conditions and creation of jobs.

The Assessor reads these declarations as requiring that every tenant be specifically engaged in research, development, or manufacturing related to science and technology. The legislature explicitly stated that the R&T Park is to be developed so as to further technological research and development, the manufacturing of related goods, and related support services. The activities specified by the legislature are not as narrow as the Assessor contends. The appropriate uses of the Property include activities that are related to, and supportive of, the R&T Park's exempt purpose.

The legislature also established some leeway for the Foundation to determine what activities relate to and support the R&T Park's exempt purpose. The legislature provided non-profit corporations, like the Foundation, with special powers, including, in relevant part:

- (1) To acquire, purchase, hold, use, improve, lease, sell, transfer, and dispose of any property, real, personal, or mixed, or any interest therein.
- (2) To create, develop, construct, operate, manage, and finance regional research and development parks, related facilities, and infrastructure,

independently or in cooperation with other private or public entities, including one or more institutions of higher education. . . .

(5) To make and enter into cooperative endeavor agreements with the United States, or its agencies, or with any public or private association, corporation, or individual.

(6) To attract investments in research and development and high technology businesses and industries by conducting and focusing attention on various educational, cultural, scientific, and economic activities in the region and the state, assisting potential investors with information requested to determine whether to invest in the region or in the state, and promoting technology transfer.

(7) To perform any activity necessary to qualify as a “Louisiana research park” and to have a “qualified technology fund” as defined in R.S. 51:1923.

(8) To perform any activity necessary to be a “research and development park” and operate a “park area” as defined in R.S. 17:3389.

(9) To conduct activities that address natural or environmental issues that impact community safety and the economic climate of the region, including the regionalization of emergency response systems. . . .

(12) To conduct activities that retain and enhance existing businesses and industries in the region and the state through research and development and that diversify the economy to include technology and knowledge-based businesses and industries.

(13) To promote and conduct activities to train the existing labor force in technology and to recruit labor from other states, particularly former Louisiana residents, for high technology businesses and industries.

(14) To conduct activities for any purpose or pursuant to any other authorization set forth in this Subpart which capitalize on the state’s assets, including its natural resources and its people; maximize the benefits of the state’s resources by promoting value-added products and a qualified labor force; match the competencies of the labor force with the market demands; and promote the coordination of information between employers, potential employees, and sources of employee training and recruitment to match employer needs and employee skills.²

Based on the legislature’s declaration and grant of authority, and the evidence in the record, the Board finds that the first prong of the test has been met. The legislature’s mandate is reflected in the Foundation’s Articles of Incorporation. The dedication of the Property to the public interest is further made a part of the Foundation’s lease contracts and is made binding on the tenants. Furthermore, the Foundation acts as if it were an extension of UNO for all practical purposes, with close coordination and cooperative administration of the Property.

² La. R.S. 17:3397.5 (1) – (14).

The real dispute in this case is concerns the second prong of the test: the actual use of the Property. More specifically, whether each tenant's activities supported the R&T Park's exempt purpose. The Fourth Circuit holds that the 21(A) Exemption is broadly worded and is to be applied in a straightforward manner. The Foundation, acting as an extension of UNO, puts each tenant through a rigorous screening process and subjects them to continued monitoring. Absent some indication that the Foundation has deviated from the legislature's directive, it is not appropriate for the Assessor or this Board to essentially devise its own criteria for screening and monitoring tenants. The legislature has delegated that function to UNO and the Foundation.

The evidence, including the Foundation's business practices show that every tenants' activities supported the R&T Park's exempt purpose. The Assessor points to the activities of Whitney and Kissee because these entities are in the financial and accounting sector. However, they provide financial and accounting services in support of, and in relation to, the Foundation and research and technology businesses. The services provided by Whitney and Kissee are comparable to the services that made the Port more attractive in *Port of New Orleans II*. In addition, Kissee supports the Foundation directly as its outsourced CFO. Finally, the facts show that Whitney provided vital support to the R&T Park in the past and continues to do so.

For the foregoing reasons, the Board holds that the Property is exempt from *ad valorem* property tax for the 2022 and 2023 Tax Years. The Property has been dedicated a public purpose, and the Foundation is legally and contractually bound to act in furtherance of that purpose. The Foundation and UNO make that obligation binding on their tenants through rigorous screening, monitoring, and contractual agreements. All activities at the Property are related to research, technology, and manufacturing, or related support services. Accordingly, the Property is public property used for a public purpose and exempt under the 21(A) Exemption for the Tax Years at issue.

Therefore, **IT IS HEREBY ORDERED** that the Foundation is entitled to a full refund of the amounts paid under protest with interest as provided for by law.

IT IS FURTHER ORDERED that on or before APRIL 30, 2024, the parties shall submit a joint proposed Judgment accordance with this Order and Reasons and the parties' agreed-upon calculation of the refund and interest.

IT IS FURTHER ORDERED that if the parties cannot agree on the form of a proposed Judgment, that any party or parties may submit a proposed Judgment and Memoranda on or before MAY 3, 2024. A party or parties may file a response to the proposed Judgment and Memoranda of another party or parties on or before MAY 8, 2024.

IT IS FURTHER ORDERED that the Foundation's Motion to Reconsider Ruling on the Assessor's Supplemental Peremptory Exception of Prescription Related to the Foundation's La. Const. Article VII, Section 21(B) Exemption Claim is DENIED AS MOOT.

This is a non-final Order and does not constitute an appealable Judgment as contemplated by La. R.S. 47:1410 and La. R.S. 47:1434.

SIGNED AT BATON ROUGE, LOUISIANA, APRIL 11, 2024.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE