

## **Johnson Scores Victory with Property Tax Exemption Decision**

In a recent decision, the Vermont Supreme Court held that property owned by Vermont Studio Center, Inc. (VSC) in Johnson is not exempt from property tax. *Vermont Studio Center, Inc. v. Town of Johnson*, 2010 VT 59.

VSC's property is primarily used for an artists' residency program. Approximately 2000 artists, writers, printmakers, and photographers apply annually for 612 four-week residencies. Those who wish to participate in the program must submit an application, an application fee, a portfolio of their work or a manuscript, a current resume and three references. A jury reviews these documents and selects participants. Participants are charged \$3,750 for a four-week residency, although most seek financial aid.

VSC claimed a tax exemption under 32 V.S.A. § 3802(4), which exempts from taxation "[r]eal estate ... used for public ... uses." The Johnson listers determined that VSC did not satisfy these requirements and the board of civil authority agreed. VSC then appealed to the superior court which reached a similar conclusion.

The Vermont Supreme Court noted that those persons seeking to benefit from the use of VSC's property must file an application and VSC exercises sole discretion in determining who qualifies. The existence of VSC's screening process and the restrictions it imposes on those who can benefit from the primary use of the property prohibited it from being considered a "public" use. Instead, according to the Court, VSC's beneficiaries are "finite and limited." While an organization need not actually serve every member of the community to be entitled to a tax exemption under § 3802(4), the benefits conferred nonetheless "must be upon the public at large, or an indefinite part of such public, rather than a closed circle, or group determined by choice or selection." In cases where beneficiaries are restricted to persons selected by a particular organization, a tax exemption cannot be granted under 32 V.S.A. § 3802(4) because the service provided is "not essentially public in nature."

A copy of the *Vermont Studio Center* decision can be obtained at <http://info.libraries.vermont.gov/supct/current/op2009-361.html>

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