

# OHIO BOARD OF TAX APPEALS

Fostoria Hospital Association,	)	
	)	CASE NO. 01-V-414
Appellant,	)	
	)	
vs.	)	(EXEMPTION)
	)	
Thomas M. Zaino,	)	
Tax Commissioner of Ohio,	)	DECISION AND ORDER
	)	
Appellee.	)	

## APPEARANCES:

For the Appellant - Kenneth J. Swint  
VP of Finance  
Fostoria Hospital Association  
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Fostoria, OH 44830-0907

For the Appellee - Betty D. Montgomery  
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ENTERED: February 15, 2002

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

This matter is considered by the Board of Tax Appeals upon the notice of appeal filed by Fostoria Hospital Association (“Fostoria”) from the Tax Commissioner’s final determination, denying an application for real property exemption. The property at issue involves two parcels with a single-family residence on each, rented at fair market rent as

temporary housing for physicians. Fostoria claims the housing furthers the charitable purpose of the hospital, a nonprofit corporation.

These parcels are identified as parcel numbers 54-0000147930 and 54-0000148190.

On Fostoria's application for exemption, the property's use was described as follows:

“Currently, the property is used to house new employees on a temporary basis. In the future, the property will be used for hospital expansion, no date [for expansion] is established at this time.”  
(Explanation added.)

This matter is considered by the Board of Tax Appeals pursuant to R.C. 5717.02 upon the notice of appeal, the statutory transcript of the proceedings below as certified by the Tax Commissioner (ST.) and the record (R.) of the evidentiary hearing before this Board.

We note the affirmative burden borne by an appellant in an appeal taken from a final order of the Tax Commissioner. In *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121, the Supreme Court stated:

"Absent a demonstration that the commissioner's findings are clearly unreasonable or unlawful, they are presumptively valid. Furthermore, it is error for the BTA to reverse the commissioner's determination when no competent and probative evidence is presented to show that the commissioner's determination is factually incorrect. \*\*\*" *Id.* at 124. (Citation omitted.)

Consequently, the taxpayer has the burden of proof to demonstrate that it is entitled to the exemption. *OCLC Online Computer Library Ctr. Inc. v. Kinney* (1984), 11 Ohio St.3d 198; *Episcopal Parish v. Kinney* (1979), 58 Ohio St.2d 199.

At the outset, it is appropriate to note the rule in this state that all real property and its improvements are to be taxed by uniform rule according to value. The General

Assembly is, however, empowered by the Ohio Constitution to pass laws to exempt certain types of property. Section 2, Article XII, Ohio Constitution reads, in pertinent part, as follows:

"\* \* \* Land and improvements thereon shall be taxed by uniform rule according to value \* \* \*. Without limiting the general power, subject to the provisions of Article I of the constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, \* \* \*."

Thus, exemption from taxation is the exception to the rule. *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186.

R.C. 5709.12(B) provides in relevant part that "real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation." Two requirements exist for exemption under this section.<sup>1</sup> First, the property must belong to an institution. Second, the property must be used "exclusively" for charitable purposes. *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405. The Supreme Court has determined that the second requirement of R.C. 5709.12(B) means that the property must be primarily used for charitable purposes. *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134, 135.

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<sup>1</sup> As described in the Tax Commissioner's final determination, we note that Fostoria's application seeks exemption pursuant to R.C. 5713.08 and 5713.081, neither of which supports a basis for granting an exemption. The Tax Commissioner nevertheless considered Fostoria's application under R.C. 5709.12. It is well settled that the Board of Tax Appeals has jurisdiction to consider only the applicability of those sections of the Revised Code raised by Appellant before the Tax Commissioner. See *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134. Cf. *CNG Development Co. v. Limbach* (1992), 69 Ohio St.3d 28. Insofar as the determination of the Tax Commissioner contains his analysis of R.C. 5709.12 and its applicability to the property owned by Fostoria, we will exercise jurisdiction over the applicability of R.C. 5709.12, despite Fostoria's failure to raise it.

At hearing before this Board, Fostoria offered the testimony of Ken Swint, Vice President of Finance for Fostoria. Mr. Swint testified that the parcels in question were obtained by Fostoria to provide for future expansion of the hospital. Currently, the residential structures on the parcels are used to house employee-physicians whom Fostoria has recruited to work in the area. (R. p. 6, 7, 12) The employees sign a lease with Fostoria and pay monthly lease payments at a fair market value. (R. p. 16, 17) Mr. Swint indicated that the temporary housing serves as a recruitment tool for Fostoria, and that the occupants have a place to live until they can obtain permanent housing in the area. (R. p.6) Further, Mr. Swint testified that the City of Fostoria has been classified as “a medically underserved area.” (R. p. 6, 7, 13) Mr. Swint argues that given the area’s need to recruit and place trained physicians, the temporary housing on the subject parcels serves to fulfill the charitable mission of the hospital. (R. p. 7)

The Tax Commissioner notes in his final determination that Fostoria is an institution, and as such, the first prong of R.C. 5709.12 is satisfied. (S.T. p.1) As to the second prong, the Supreme Court has consistently held that real property rented and used for private residential purposes is not entitled to an exemption under the statute. The court has found such properties to be taxable, not because the use fails to be a charitable one, but because the use fails to be “exclusively” charitable, as expressly required by R.C. 5709.12. See *Doctor’s Hospital v. Bd. of Tax Appeals* (1962), 173 Ohio St. 283, where the Supreme Court held, in a case factually analogous to the case at bar, that housing provided by a charitable hospital for its interns and residents-in-training is not exempt as property used exclusively for charitable purposes under R.C. 5709.12. See, also, *Beerman Foundation, Inc. v. Bd. of Tax Appeals* (1949), 152 Ohio St. 178; *Nat’l Church Residences v. Lindley*

(1985), 18 Ohio St.3d 53; *Cogswell Hall, Inc. v. Kinney* (1987), 30 Ohio St.3d 43; *Oikos Community Dev. Co. v. Zaino*, (Nov. 9, 2001), B.T.A. 2000-T-2037, unreported; *Grandview Hosp. and Medical Center v. Zaino*, (Nov. 9, 2001), B.T.A. 2000-N-1463, unreported, appeal filed Dec. 10, 2001, Montgomery Cty. Ct. of Appeals.

Therefore, based upon the testimony and the evidence in the record, we are unable to conclude that the residences are used primarily for charitable purposes under R.C. 5709.12. It is the Decision and Order of the Board of Tax Appeals that Fostoria has not established its right to exemption from real property tax for the subject parcels. Therefore, the final determination of the Tax Commissioner must be, and the same hereby is, affirmed.

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