

OHIO BOARD OF TAX APPEALS

Community Health Professionals, Inc.,)
)
 Appellant,) (CASE NO. 2004-K-689
) (REAL PROPERTY TAX EXEMPTION)
)
 vs.) DECISION AND ORDER
)
 William W. Wilkins, Tax Commissioner)
 of Ohio,) **Affirmed on Appeal May 30, 2007**
) **Ohio Supreme Court**
 Appellee.)

APPEARANCES: **113 Ohio St.3d 432, 2007-Ohio-2336**

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Entered May 5, 2006

Mr. Eberhart and Mr. Dunlap concur. Ms. Margulies concurs in part and dissents in part.

On August 4, 2004, appellant, Community Health Professionals, Inc., filed the present appeal through which it seeks reversal of the Tax Commissioner's final determination denying its application to exempt the subject property¹ from real property taxation for tax year 2002. This matter is considered upon appellant's notice of appeal, the statutory transcript ("S.T.") certified by the Tax Commissioner, the record of the

¹ The subject property is identified in the Defiance County Auditor's records as parcel number K14-0036-0-015-10.

evidentiary hearing convened before this board, and the post-hearing briefs submitted by counsel.

In denying appellant's request to accord tax exempt status to the subject property, the commissioner made the following pertinent findings:

“The applicant is requesting exemption pursuant to R.C. 5709.12 and R.C. 5709.121 for two acres and the improvements to land.² The property in question is an office building used by organizations that provide home health care, including skilled intermittent care, hospice care, and private duty care.

“On August 14, 2002 Nancy Sink, V.P. Finance, provided additional information that indicates that the applicant provides services to the public without discrimination. In addition, three separate corporations are housed within this building, and each corporation has several programs. Some of these programs accept clients regardless of their ability to pay, and other programs do not. There is no sliding scale fee system. Services are not provided free of charge. However, if a patient is unable to pay, a patient care fund, obtained through fund raising activities, will cover the bill. The information did not make clear whether all three corporations make use of the patient care fund.” S.T. at 1.

² Apparently, subsequent to the tax lien date in question and the filing of appellant's application for exemption with the Tax Commissioner, appellant acquired four additional acres adjacent to the two-acre tract for which exemption was originally sought. In reviewing the present appeal, however, we will restrict our consideration to the two acres which were the subject of appellant's initial application and the commissioner's final determination. See, generally, *Bethesda Healthcare Inc. v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749; *Green Twp. Bd. of Trustees v. Tracy* (Dec. 28, 1993), BTA No. 1992-B-818, unreported. With respect to the property in issue, it was acquired by appellant on October 23, 2001, at which time the claimed exempt use began. As it was not used for an exempt purpose as of January 1, 2001, we will likewise restrict our review of appellant's application to tax year 2002. See, e.g., *Christian Benevolent Assn. of Greater Cincinnati, Inc. v. Limbach* (1994), 69 Ohio St.3d 296, syllabus; *Ursuline Academy of Cleveland v. Bd. of Tax Appeals* (1943), 141 Ohio St. 563, 567; *Columbus City Schools Bd. of Edn. v. Zaino* (Mar. 8, 2002), BTA No. 2000-V-96, unreported.

Continuing, the Tax Commissioner found appellant constituted not only an institution, but a charitable institution.³ Continuing, he determined that the property was neither used exclusively by appellant for a charitable purpose nor used in furtherance of a charitable purpose without a view to profit. In reaching these conclusions, he criticized appellant's failure to provide evidence with respect to several aspects of its operations:

“The applicant has stated that it provides services to the public without discrimination. It states that it has provided services to clients who couldn't pay after the services were provided. In its objections, the applicant, which operates similar facilities in Ohio, states that in the previous year it provided services to ten skilled patients whose bills were covered by the patient care fund. It has not specified how many clients at this facility have received care free of charge from 2002 to the present. Since the applicant operates several facilities, it is not clear that all ten patients received care from this facility. It also stated that an unspecified number of hospice patients who did not have insurance coverage received care, and their claims were written off instead of being paid by the patient care fund. Although information was specifically requested about this facility, the applicant has not specified the total number of clients that it has served at this facility since 2002 nor the total that received free or reduced fee care at this facility, and therefore the portion of clients or patients receiving free or reduced fee care can not [sic] be determined. It is also unclear whether the applicant agreed to provide services even though its staff knew that the clients would not be able to pay, in which no debt was incurred. Not collecting unpaid debts incurred by the hospice patients is not the same as offering charitable care based on a sliding fee system. Since the applicant has not provided clear evidence to show that it has a system for providing care without regard to the ability of the client to pay, then its use of the property in

³ The commissioner made no findings regarding the nature of the two other organizations occupying the subject property, i.e., VNA Comprehensive Services (“VNA Comprehensive”) and Private Duty Services, Inc. (“Private Duty”).

question does not satisfy the requirements of R.C. 5709.12.”
S.T. at 2.

As for R.C. 5709.121, similar concerns were expressed as to the sufficiency
of appellant’s evidence:

“In its objections, the applicant states that part of the property is used by VNA Comprehensive Services, Inc. (VNA CS) and Private Duty Services, Inc. (PDS). Both of these are nonprofit organizations and are exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. The applicant states that VNA CS sees Medicaid and waiver patients. PDS serves private pay clients, passport and Title XX clients. There is no information regarding the number of clients or patients that each entity has served at this site from 2002 to the present, or how many of these were given free or reduced fee care. Therefore, the applicant has provided insufficient information to show that this property has been used for a charitable purpose. This does not satisfy the requirements of R.C. 5709.121.” S.T. at 3.

From the denial of its application, appellant appealed to this board,
specifying the following as error:

“1. The Tax Commissioner erred in finding that the property in the application is not exempt from taxation under R.C. 5709.12, in that the property in question is used for charitable purposes.

“2. The Tax Commissioner erred in finding that the property in the application is not exempt from taxation under R.C. 5709.121, in that the property in question is used for charitable, educational or public purposes.”

In considering this appeal, we recognize at the outset the affirmative burden
which is borne by an appellant. As noted in *Alcan Aluminum Corp. v. Limbach* (1989),
42 Ohio St.3d 121:

“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.)

It is therefore an appellant’s obligation to rebut this presumption by establishing a clear right to the relief requested, demonstrating in what manner and to what extent the Tax Commissioner’s determination is in error. *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138; *Ohio Fast Freight, Inc. v. Porterfield* (1968), 29 Ohio St.2d 69; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

The issue presented in this appeal is whether the commissioner erred in denying tax exempt status to certain real property. The authority to exempt property from ad valorem taxation emanates initially from Section 2, Article XII, of the Ohio Constitution:

“Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt *** institutions used exclusively for charitable purposes ***.”

While the General Assembly has exercised its authority to enact legislation to exempt qualifying property from taxation, it has also expressed the limited scope of the grant, acknowledging that “[a]ll real property in this state is subject to taxation, except only such as is expressly exempted therefrom.” R.C. 5709.01(A). As a result, “in any consideration concerning the exemption from taxation of any property, the burden of proof shall be placed on the property owner to show that the property is entitled to

exemption.” R.C. 5715.271. Therefore, apparent from the preceding, “[e]xemption is the exception to the rule and statutes granting exemption are strictly construed.” *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186.⁴

In the present case, appellant sought exemption for the subject property pursuant to both R.C. 5709.12 and R.C. 5709.121. R.C. 5709.12 provides, in relevant part:

“Real *** property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.”

In *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405, the court succinctly set forth the requirements imposed by R.C. 5709.12 for obtaining exemption:

“[T]o grant exemption under R.C. 5709.12, the arbiter must determine that (1) the property belongs to an institution,⁵

⁴ The policy reasons underlying the construction to be accorded statutes granting exemption were discussed by the Supreme Court in *Bethesda Healthcare Inc. v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749:

“In *Cincinnati College v. State* (1850), 19 Ohio 110, 115, *** we stated that ‘all laws that exempt any of the property of the community from taxation should receive a strict construction. All such laws are in derogation of equal rights.’ The court pointed out, ‘If property, employed in one kind of business, is exempted from taxation, the burden will necessarily fall more heavily on property employed in other pursuits.’ When an exemption is granted by the General Assembly, ‘[t]he rationale justifying a tax exemption is that there is a present benefit to the general public from the operation of the charitable institution sufficient to justify the loss of tax revenue.’ *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 201 ***. Statutes providing exemption from taxation must be strictly construed. *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407, *** paragraph two of the syllabus. The burden rests on the party claiming an exemption to demonstrate that the property qualifies for the exemption. *OCLC Online Computer Library Ctr. Inc. v. Kinney* (1984), 11 Ohio St.3d 198, 201 ***.” *Id.* at ¶19. (Parallel citations omitted.)

⁵ In *Highland Park Owners*, *supra*, at 407, the term “institution” was defined as:

and (2) the property is being used exclusively for charitable purposes. We have held that a private profit-making venture does not use property exclusively for charitable purposes. *Cullitan v. Cunningham Sanitarium* (1938), 134 Ohio St. 99 ***; *Cleveland Osteopathic Hosp. v. Zangerle* (1950), 153 Ohio St. 222 ***; *Lincoln Mem. Hosp., Inc. v. Warren* (1968), 13 Ohio St.2d 109 ***. Nevertheless, “any institution, irrespective of its charitable or non-charitable character, may take advantage of a tax exemption if it is making exclusive charitable use of its property.” *Episcopal Parish v. Kinney, supra*, 58 Ohio St.2d at 201 ***. As the BTA concluded, the applicant for exemption under R.C. 5709.12 need not be a charitable institution.” *Id.* at 406-407. (Parallel citations omitted and emphasis sic.)

In comparison, R.C. 5709.121 provides that:

“Real property *** belonging to a charitable *** institution *** shall be considered as used exclusively for charitable *** purposes by such institution *** if it meets one of the following requirements:

“(A) It is used by such institution *** under a lease, sublease, or other contractual arrangement:

“(1) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;

“(2) For other charitable *** purposes;

“(B) It is made available under the direction or control of such institution *** for use in furtherance of or incidental to its charitable *** purposes and not with the view to profit.”

Footnote contd. _____

“An establishment, especially one of eleemosynary or public character or one affecting a community. An established or organized society or corporation. It may be private in its character, designed for profit to those composing the organization, or public and charitable in its purposes, or educational (e.g. college or university). ***.”

In *Cincinnati Nature Ctr. Assn. v. Bd. of Tax Appeals* (1976), 48 Ohio St.2d

122, the court announced a three-pronged test to determine whether real property belonging to a charitable or educational institution falls within the terms of R.C. 5709.121(B):

“To fall within the terms of R.C. 5709.121, property must (1) be under the direction or control of a charitable or educational institution or state or political subdivision, (2) be otherwise made available ‘for use in furtherance of or incidental to’ the institution’s ‘charitable *** or public purposes,’ and (3) not be made available with a view to profit.” Id. at 125.

At times, R.C. 5709.12 and 5709.121 have been discussed interchangeably; however, as noted by the court in *Bethesda Healthcare*, supra, the latter statute does not itself grant exemption. The relationship of these statutes was more fully explained in *Episcopal Parish v. Kinney* (1979), 58 Ohio St.2d 199, wherein the court adopted Justice Stern’s concurring opinion in *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 203:

“Initially, it is important to observe that, although R.C. 5709.121 purports to define the words used exclusively for ‘charitable’ or ‘public’ purposes, as those words are used in R.C. 5709.12, the definition is not all-encompassing. R.C. 5709.12 states: ‘*** Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.’ Thus any institution, irrespective of its charitable or noncharitable character, may take advantage of a tax exemption if it is making exclusive charitable use of its property. See *Wehrle Foundation v. Evatt* (1943), 141 Ohio St. 467, 49 N.E.2d 52. The legislative definition of exclusive charitable use found in R.C. 5709.121, however, applies only to property ‘belonging to,’ i.e., owned by, a charitable or educational institution, or the state or a political subdivision. The net effect of this is that R.C. 5709.121 has no application to

noncharitable institutions seeking tax exemption under R.C. 5709.12. Hence, the first inquiry must be directed to the nature of the institution applying for an exemption.” *Id.* at 200-201. (Emphasis sic.)

In *Olmsted Falls Bd. of Edn. v. Tracy* (1997), 77 Ohio St.3d 393, the court again considered the preceding statutes and case law, summarizing them in the following manner:

“Thus, in deciding whether property is exempt under the charitable use provisions of R.C. 5709.12 and 5709.121, tax authorities must first determine whether the institution seeking exemption is a charitable or noncharitable institution. If the institution is noncharitable, its property may be exempt if it uses the property exclusively for charitable purposes. If the institution is charitable, its property may be exempt if it uses the property exclusively for charitable purposes or it uses the property under the terms set forth in R.C. 5709.121.”

In an effort to demonstrate its entitlement to the exemption sought for the subject property, appellant presented the testimony of its vice president of finance, Nancy Sink. She indicated that the subject is used to provide administrative office space for appellant and two other organizations which rent space from appellant, i.e., VNA Comprehensive Services (“VNA Comprehensive”) and Private Duty Services, Inc. (“Private Duty”).⁶ Sink first explained that all three entities have as their genesis Van Wert Area Visiting Nurses Association, an organization originally incorporated in 1974

⁶ The record is somewhat unclear regarding the precise nature of Sink’s involvement with VNA Comprehensive and Private Duty. While she testified regarding all three companies which utilize the subject property, she explained during cross-examination that “[t]here could be a small overlap [in staffing], but not a lot. Basically, each company has its own staff, but there is some overlap.” H.R. at 42. It appears from her testimony, during which she noted that VNA Comprehensive and Private Duty have an accountant who reports to her, that she generally oversees the accounting functions for all three companies.

which later, in 1997, changed its name to Community Health Professionals, Inc. According to Sink, three separate organizations were created over time for cost reporting and Medicaid reimbursement purposes.

Appellant's articles of incorporation indicate that it was formed "[t]o provide nursing services for ill, disabled, injured or otherwise mentally and physically impaired." Ex. F at 3. The articles of incorporation of VNA Comprehensive, incorporated in 1991, provide that its purpose was "[t]o provide comprehensive nursing and home health care for ill, injured, disabled or physically impaired individuals at their individual places of residence (whether temporary or permanent[.]" Ex. G. at 1. Finally, incorporated in 1995, Private Duty's articles of incorporation similarly indicate that it was formed "[t]o provide nursing and home health care for ill, injured, disabled or physically impaired individuals at their individual places of residence (whether temporary or permanent)[.]" Ex. H at 1. All three of these entities have been granted exemption from federal income taxation pursuant to Internal Revenue Code section 501(c)(3). Ex. I.

Sink elaborated, indicating appellant provides skilled, intermittent care, and hospice services pursuant to a physician's signed orders. Appellant provides these services to any member of the community regardless of their ability to pay. She indicated that approximately eighty percent of the costs of appellant's services are paid by Medicare, with the remainder being paid by private insurance. To the extent appellant is not paid by one of these sources, it foregoes collection of the remainder. Through various fundraising and auxiliary groups' efforts, monies are raised for costs associated with appellant's hospice program, as well as for the anticipated future construction of a

hospice unit. VNA Comprehensive, like appellant, also requires physician pre-approval. Unlike appellant, however, it provides skilled home health care services exclusively to Medicaid clients. As is the case with appellant, costs exceeding those covered by Medicaid are written off.⁷

Private Duty offers home health care services to individuals without need of doctor's orders, as well as an adult day care program. Individuals who utilize Private Duty's services do so on a private pay basis, with payment being made either by the individual or through state-funded or federally funded programs such as Passport, Options, Alzheimer Care Relief, and the Women, Infants and Children's program ("WIC"), each of which imposes certain age, income, and/or independence restrictions. Appellant also maintains a "patient-care fund," funded through various fundraising activities, which can serve as a source of funding under some circumstances. Sink testified that "[t]he only one area where we could not accept a client if they could not pay would be Private Duty Services, which is someone coming in to clean your house or perhaps give you a bath even though you didn't need skilled help; but that represents a small portion of Private Duty Services." H.R. at 14-15.

In addition to the aforementioned fundraising activities, appellant also maintains a patient care fund which provides financial reimbursement to all three organizations where a patient is accepted and later determined to be unable to pay for the

⁷ Appellant submitted to the commissioner a copy of the financial statements prepared for all three organizations as of December 31, 1999 and 2000. Notably, for each of these years, VNA Comprehensive made "donations" of \$100,000 and \$422,937, respectively. S.T. 38, 36. No further information was provided regarding the nature of these donations.

services provided. This fund serves to cover the difference between either insurance coverage or other programs.

In an effort to respond to the criticisms expressed by the commissioner in his final determination, Sink also referred to three documents intended to demonstrate a breakdown, for 2002 through 2004, of the manner by which individuals were charged for services provided. These documents quantify the number of persons served by all three organizations, the number treated at no charge, the amounts paid by the patient care fund, the amounts ultimately written off, and the number of patients receiving treatment on a sliding fee scale based upon their ability to pay.

No one questions appellant's ownership interest in the property, compare, e.g., *Performing Arts School of Metro. Toledo, Inc. v. Wilkins*, 104 Ohio St.3d 284, 2004-Ohio-6389, or, as determined by the commissioner, that appellant qualifies as a charitable institution. Although not serving as a basis for the denial of the requested exemption, on appeal, the commissioner argues that the portion of the subject property occupied by VNA Comprehensive and Private Duty cannot be considered to be used exclusively for charitable purposes since it is used for a business purpose by appellant; i.e., it leases the property to two other organizations. This board has previously concluded that the use of a property under such conditions precludes it from being entitled to exemption under R.C. 5709.12. For example, in *Thomaston Woods L.P. v. Lawrence* (June 15, 2001), BTA No. 1999-L-551, unreported, this board held:

“We note that it is not the amount of net annual rental income received by the property owner that is determinative of a property's exemption status. Even a property that makes no money, or is losing money may be subject to real

property taxation. In the instant case, it is the fact that the property owner itself is leasing the property commercially that causes the second prong of the R.C. 5709.12(B) test to not be met.”

See, also, *Lincoln Mem. Hosp. v. Warren* (1968), 13 Ohio St.2d 109; *First Baptist Church of Milford v. McAndrew* (Aug. 12, 2005), BTA No. 2004-M-143, unreported; *New Covenant Believers Church v. Zaino* (May 21, 2004), BTA No. 2002-B-926, unreported.

This board has not been provided with the express terms and conditions of the leases between appellant and its tenants. The only insight regarding the arrangements for the use and occupancy of the property by these entities was provided by Sink during her testimony. Although generally indicating that VNA Comprehensive and Private Duty pay monthly rent to appellant on a cost basis, she was unable to recall the amount of rent paid, testifying that “what we do every year is we look at the depreciation cost and utility expense and we try very hard to rent it just on a cost basis to the sister [corporation] ***.” H.R. 32. Based upon the preceding case law and the record before us, we are unable to conclude that the portion of the subject property which appellant leases is used exclusively for charitable purposes under R.C. 5709.12.

We proceed to consider the extent to which the use of the subject property by appellant and its tenants can be found to be in furtherance of a charitable or public purpose and made available without a view to profit, another avenue of exemption open to property owned by charitable institutions under R.C. 5709.121. There exists no statutory definition of “charitable purpose,” resulting in reference being made to the

definition of “charity” provided by the court in paragraph one of its syllabus in *Planned Parenthood Assn. v. Tax Commr.* (1966), 5 Ohio St.2d 117:

“In the absence of a legislative definition, ‘charity,’ in the legal sense, is the attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity.”

As previously indicated, the stated purpose of all three organizations is to provide nursing care to individuals within the community. The evidence presented demonstrates that costs for such services are typically paid by federal or state programs, the patient care fund, or written off entirely. In reviewing the evidence before us, we consider the present case analogous to the Tenth District Court of Appeals’ decision in *Miracit Dev. Corp. v. Zaino*, Franklin App. No. 04AP-322, 2005-Ohio-1021. In that case, Miracit purchased a property in an inner city, revitalization area of Columbus. Located on this property was an existing day care facility which Miracit leased to FCI, Too. Both Miracit and FCI, Too had been recognized by the Internal Revenue Service as 501(c)(3) organizations. Although this board found Miracit to be a charitable institution, for reasons similar to those advanced by the commissioner in this case, we concluded that the use of the property as a day care facility did not constitute a charitable purpose.

In reversing our decision, the court held:

“As noted previously, under R.C. 5709.121(A)(2), property owned by a charitable institution may be leased to another institution and still qualify for a charitable exemption if the institution leasing the property uses the property for

charitable purposes. In its decision, the BTA determined that FCI, Too did not use the property for a charitable purpose because: (1) private pay families were charged no more than subsidized families, (2) there was no established criteria for determining qualification for subsidized funding, and (3) testimony was inconsistent regarding the percentage of low-income families served by the day care center. Further, at oral argument, counsel for the tax commissioner argued that although the center had made arrangements for funding for qualified individuals through Title XX funds, no other plan existed for families to receive reduced rate care if their ability to pay was limited. In other words, there was no evidence of a sliding fee scale to accommodate disparate income levels of those families who did not qualify for Title XX funds.

“***

“In the instant case, we recognize that operation of a day care center does not define whether the property is being put to a charitable use. However, in this case, the day care center was established to further Miracit’s objective of revitalizing an economically depressed neighborhood in Columbus’ inner city and assisting the economically disadvantaged residents of that neighborhood. Under *Bethesda*, the fact that FCI, Too charges Title XX families and private pay families the same tuition and does not offer a sliding fee scale to accommodate disparate income levels of those families who do not qualify for Title XX funds is of no consequence. Further, in contrast to *Bethesda*, evidence presented at the hearing establishes that a large percentage, between 50 and 75 percent, of those utilizing the day care center are Title XX qualified families.

“Since Miracit’s real property is used in a consonant manner under applicable controlling criteria regarding charitable purposes, such property qualifies for tax exemption status under R.C. 5709.121(A)(2). Thus, we conclude that the BTA’s decision denying Miracit’s property tax exempt status is unreasonable.” *Id.* at ¶¶ 26, 34-35.

In *Bethesda Healthcare*, *supra*, at ¶39, the court noted that “[w]hether an institution renders sufficient services to persons who are unable to afford them to be

considered as making charitable use of the property must be determined on the totality of the circumstances; there is no absolute percentage.” In this instance, we find that the subject property is indeed being used in furtherance of a charitable purpose. Although payment may, on occasion, be forthcoming from federal or state programs or private fund-raising efforts, this fact alone does not diminish the nature of the services provided without regard to the ability of individuals to make personal restitution.

Accordingly, appellant’s second specification of error is well taken. It is therefore the decision and order of this board that the final determination must be reversed consistent with our decision announced herein.

Ms. Margulies, concurring in part and dissenting in part.

I agree with that portion of the majority opinion rejecting appellant’s claim for exemption under R.C. 5709.12, and I concur that the portion of the subject property utilized by Private Duty is tax exempt under R.C. 5709.121. However, I must respectfully dissent from the majority’s ultimate conclusion that the portion of the subject property used by Community Health Professionals and VNA Comprehensive Services is exempt from ad valorem taxation pursuant to R.C. 5709.121.

As acknowledged by the majority, exemption from taxation is intended to be the exception to the rule that real property in this state is subject to taxation, with those statutes providing otherwise being subject to a strict construction. *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186.

In this instance, the subject property is utilized by several private entities in furtherance of their business interests of providing health care-related services. Based upon the record in this case, it appears that Private Duty does provide services to a substantial percentage of its patients at no charge. However, with respect to Community Health Professionals and VNA Comprehensive Services, while the efforts of these organizations may be laudable and while the individuals availing themselves of the services provided certainly benefit, the organizations in issue are not providing their services without an expectation that they will be compensated. The majority references the fact that some portion of their charges are “written off.” However, merely because such charges exceed the amount which Medicaid, Medicare, or private insurance companies approve, or a bill is deemed uncollectible, does not equate to an entity’s purpose being charitable in nature. Further, I am unpersuaded that the appellate court decision in *Miracit Dev. Corp. v. Zaino*, Franklin App. No. 04AP-322, 2005-Ohio-1021, dictates the result proposed by the majority. In that case, the court responded to a point made during oral argument regarding the absence of a sliding fee scale based upon an ability to pay for families that may not have qualified for Title XX funding. However, the federal assistance made available through Title XX is intended to aid economically disadvantaged families, while eligibility for Medicare, one of the principal federal health care programs from which the subject organizations receive payment, is predicated simply upon an individual’s age.

Accordingly, I would affirm the Tax Commissioner's final determination denying exemption for the portion of the subject property utilized by Community Health Professionals and VNA Comprehensive Services.

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