

**OHIO BOARD OF TAX APPEALS**

Board of Education of the Groveport )  
Madison Local School District, )  
 ) (REAL PROPERTY TAX EXEMPTION)  
Appellant, )  
 )  
 ) DECISION AND ORDER  
vs. )  
 )  
William W. Wilkins, Tax )  
Commissioner of Ohio, and the )  
Apostolic Church International )  
USA Columbus Ohio Assembly, )  
 )  
Appellees. )

APPEARANCES:

For the Appellant - Rich & Gillis Law Group, LLC  
Mark H. Gillis  
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For the Appellee Tax Commissioner - Richard Cordray  
Attorney General of Ohio  
Damion M. Clifford  
Assistant Attorney General  
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For the Appellee Property Owner - Richard Somuah  
3147 East Fifth Avenue  
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Entered May 19, 2009

Ms. Margulies, Mr. Johrendt, and Mr. Dunlap concur.

Appellant Board of Education of the Groveport Madison Local School District appeals from a final determination of the Tax Commissioner, in which the commissioner granted the appellee property owner’s (“Apostolic”) application for real

property exemption. The commissioner further ordered that all taxes, penalties and interest paid for tax year 2005 be remitted.

In granting Apostolic's application for real property tax exemption, the commissioner made the following pertinent findings:

"The Tax Commissioner finds that the real property described above is used as church facilities and is exempt from taxation under R.C. 5709.07, public worship.

"Property for which an applicant seeks exemption from real property taxation must have been owned by the applicant and used for an exempt purpose as of the tax lien date, January 1, in the year in which exemption is sought. See *Christian Benevolent Association of Greater Cincinnati, Inc. v. Limbach* (1994), 69 Ohio St.3d 296; R.C. 323.11; R.C. 5713.08. Here the applicant did not acquire title to the property until May 28, 2004. Therefore, exemption cannot be reviewed for tax year 2004.

"The Tax Commissioner orders that the real property described above be entered upon the list of property in the county which is exempt from taxation for tax year 2005. \*\*\*." Statutory Transcript ("S.T.") at 1.

In response to the commissioner's final determination, appellant specified the following errors in its appeal to this board:

"(1) The Tax Commissioner erred in granting real property tax exemption to the property for tax year 2005;

"(2) The Commissioner erred in finding that the property was being used for an exempt purpose as of January 1, 2005;

"(3) The Commissioner erred in finding that the property was entitled to exemption for tax year 2005 under Revised Code Section 5709.07(A)(2) as 'houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise

used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment[;]

“(4) The Commissioner erred in finding that the property was entitled to exemption for tax year 2005 under any subsection of Revised Code Section 5709.07.”

At the hearing before this board, Apostolic presented the testimony of Richard Somuah, an officer of Apostolic. Counsel for the commissioner and counsel for appellant appeared at said hearing, but did not present any witnesses. Only the commissioner and appellant filed briefs in this matter.

We begin our review by observing that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. R.C. 5715.271, which pertains to the burden of proof on a property owner, provides:

“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. The fact that property has been previously been granted an exemption is not evidence that it is entitled to continued exemption.”

In the instant matter, the burden of proof remains upon the taxpayer to establish the right to an exemption, even though the appellant is the board of education.

The issue presented in this appeal is whether the commissioner erred in granting 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 “all 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, “exemption is the exception to the rule and statutes granting exemption are strictly construed.” *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186.

In the instant matter, Apostolic sought exemption for the subject property pursuant to R.C. 5709.07. R.C. 5709.07 provides, in pertinent part:

“(A) The following property shall be exempt from taxation:

“\*\*\*

“(2) Houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment;

“\*\*\*

“(D) As used in this section:

“(1) ‘Church’ means a fellowship of believers, congregation, society, corporation, convention, or association that is formed primarily or exclusively for

religious purposes and that is not formed for the private profit of any person.”

While R.C. 5709.07 requires that the property be used exclusively for public worship, the Ohio Supreme Court has adopted a primary use test, which requires more than simply calculating the amount of time that the property is used in a taxable as opposed to a nontaxable manner. Rather, a determination as to taxable status must include an examination of both the quantity and quality of the use for which the property is utilized. “To qualify for an exemption from real property taxation as a house used exclusively for public worship under R.C. 5709.07, such property must be used in a principal, primary, and essential way to facilitate public worship.” *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432, at paragraph two of the syllabus.

In *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, the court reaffirmed the use of the “primary use” test in determining qualification for exemption pursuant to R.C. 5709.07, holding that “The General Assembly has used the phrase ‘used exclusively’ as a limitation in both 5709.07 (houses used exclusively for public worship) and R.C. 5709.12 (property used exclusively for charitable purposes). In *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134, 135, \*\*\*, this Court held that for purposes of R.C. 5709.07, the phrase ‘used exclusively for public worship’ was equivalent to ‘primary use.’” *Id.* at 120.

Under the primary use test, the court has recognized that those uses of property sought to be exempted that are merely supportive are not entitled to exemption under R.C. 5709.07. See *Faith Fellowship Ministries, supra*; *Summit*

*United Methodist Church v. Kinney* (1983), 7 Ohio St.3d 13; *Bishop v. Kinney* (1982), 2 Ohio St.3d 52.

Initially, we note that the subject property was purchased in May of 2004, and is owned by Apostolic. S.T. at 4. In reviewing Mr. Somuah's testimony before this board, it is apparent that the subject property was used only for church purposes during the time period in question, as described below.

It is also clear from Mr. Somuah's testimony that approximately fifteen to twenty members of Apostolic generally met at the subject property on a weekly basis during the time period in issue. Mr. Somuah described such meetings as approximately two hours in length, involving bible study, prayer, and discussion of other church business, including the status of the subject property.

Mr. Somuah further testified that the main purpose of the purchase of the subject property was to raze the building located on the property and construct a church. In furtherance of this purpose, Mr. Somuah stated that Apostolic has applied to bank(s) to acquire loan(s) and is in possession of construction plans. While Apostolic had not begun construction of a new church as of the date of this board's hearing, Apostolic did make certain changes, beginning after the subject's purchase in 2004, to make it habitable for meetings and other events that took place at the subject, such as picnics and cookouts. The improvements included painting the interior of the subject and replacing its water system, flooring, and bathroom. Another purpose of these improvements was to allow a church member to live in the subject, if that member was in need of shelter.

Additionally, we note Apostolic's answer to question fourteen of its application for real property exemption, which inquires as to how the property is currently being used:

"The members of the [c]hurch body use the existing building on the property to conduct church meetings and hold ministry gatherings on a regular basis. During these meetings and gatherings the church members hold prayer, praise and worship service. It is the plans of the church to use the existing building to perform church business meetings and hold worship service, while planning for remodeling of existing structure [sic] to better suit the needs of a growing congregation.

"In addition, plans are underway to erect a new church building on site and convert sufficient land into parking space to accommodate a membership of three to five hundred. The projected construction start date is summer/fall 2006." S.T. at 4.

In determining whether the applicant has met its burden of proof with regard to exemption of the subject property, we again note that, as with any consideration of an exemption from taxation, the burden of proof is placed upon the property owner to prove that the property is entitled to the exemption sought. R.C. 5715.271. Further, when a party challenges a determination of the commissioner, such party must overcome the presumption of validity of the commissioner's determination. *Alcan*, supra. See *Hatchadorian v. Lindley* (1986), 21 Ohio St.3d 66.

Here, we find that Apostolic has met its burden of proving that the subject property is entitled to exemption, and further find that appellant has not overcome the presumption of validity entitled to the commissioner's determination. The record reflects Apostolic primarily and exclusively used the subject property to

facilitate public worship. As evidenced by Mr. Somuah's testimony and Apostolic's exemption application, members of Apostolic generally met on a regular basis at the subject property to conduct church activities that included prayer, bible study, and discussion of church-related issues. Additionally, while infrequent, Apostolic held picnics and cookouts for church members at the subject property. The record does not reflect any other use of the subject property other than those uses testified to by Mr. Somuah.

Appellant, at the hearing before this board, did not present any credible evidence that overcame the presumption of validity accorded to the commissioner's findings. *Alcan* and *Hatchadorian*, supra. Aside from appellant's counsel's examination of Mr. Somuah and photographs of the subject, of which the date of said photographs could not be verified, this board was presented with no persuasive evidence from appellant that the commissioner's finding was invalid.

While the record reveals that Apostolic had not razed the subject as of the date of this board's hearing, Apostolic has demonstrated an intent, since the purchase of the subject in 2004, and as of the relevant tax lien date of January 1, 2005, to build a church on the subject property, as demonstrated by its pursuance of financing, securing of construction plans, removal of a structure and trees on the property, and Mr. Somuah's testimony related to the original purpose for acquiring the subject. *Carney v. Cleveland City School Dist. Pub. Library* (1959), 169 Ohio St. 65; *Grove City v. Zaino* (Sept. 24, 2004), BTA No. 2003-K-722, unreported, at 9; *Episcopal School of Cincinnati v. Levin*, 117 Ohio St.3d 412, 2008-Ohio-939; *Sylvania*

*Church of God v. Levin*, 118 Ohio St.3d 260, 2008-Ohio-2448. See, e.g., R.C. 323.11 (“The lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for each year shall attach to all real property subject to such taxes on the first day of January, annually \*\*\*.”); R.C. 5715.01 (“The commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year \*\*\*.”); R.C. 5715.19 (“The determination of any such complaint [filed pursuant to this section] shall relate back to the date when the lien for taxes \*\*\* for the current year attached \*\*\*.”). See, also, R.C. 5713.03; 5713.08; *City of Cleveland v. Limbach* (1988) 40 Ohio St.3d 295; *Christian Benevolent Assn. of Greater Cincinnati, Inc.*, syllabus, supra; *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552; *W. Side Deutscher Frauen Verein v. Tracy* (1997), 78 Ohio St.3d 124; *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26; *Centerville-Washington Park Dist. v. Wilkins* (Aug. 5, 2008), BTA No. 2006-N-870, unreported (holding that exemption was proper based upon intent to use property for a public purpose as of the relevant tax lien date, although construction did not take place until seven years after such date, because of funding issues.) In fact, in addition to his testimony before this board that the reason for the purchase of the subject property was to erect a church upon it, Mr. Somuah testified that Apostolic is presently awaiting approval regarding financing for new construction on the subject property.

Based on the above, we find that Apostolic's primary use of the subject property meets the requirements set forth in *Faith Fellowship* and *True Christianity*, supra. We also find that Apostolic has sufficiently demonstrated its intent to develop the subject property into a church. *Carney* and *Holy Trinity*, supra. Compare *Welch Ave. Freewill Baptist Church v. Kinney* (1983), 10 Ohio App.3d 196, at 197. Therefore, we find the final determination of the Tax Commissioner to be according to law, and affirm such determination.

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