

OHIO BOARD OF TAX APPEALS

Church of God in Northern Ohio, Inc.,)
)
) Appellant,) (REAL PROPERTY TAX EXEMPTION)
)
 vs.)
) DECISION AND ORDER
)
 William W. Wilkins, Tax)
 Commissioner of Ohio,) Appeal Filed Dec. 23, 2008
) Ohio Supreme Court
)
) Appellee.)

APPEARANCES:

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Entered November 25, 2008

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

Church of God in Northern Ohio, Inc., appeals from a final determination of the Tax Commissioner, in which the commissioner denied appellant's application for real property exemption for tax year 2003, and ordered that the request for remission of taxes and interest for tax year 2002 be denied. The commissioner further ordered that penalties charged through December 8, 2006, the date of the final determination, be remitted.

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

“The subject property is the location of the state executive offices and ministry training center for the applicant. It includes office space for the support staff for the administrative bishop, who oversees [sic] 121 member congregations in the northern half of Ohio. It also contains offices for various ministries administered by the applicant, as well as conference and training rooms. According to the applicant, its activities relate to ‘[f]acilitating the proclamation of the Gospel of Jesus Christ and supporting public worship.’

“The applicant seeks exemption under R.C. 5709.12(B), which provides that ‘real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.’ In order to be entitled to exemption under this section, two requirements must be met: the property must belong to an institution, and the property must be used exclusively for charitable purposes. *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405. The applicant is an institution. Therefore, the first requirement of this section is satisfied.

“The issue is whether the property is used for a charitable purpose. The Ohio Supreme Court has defined ‘charity’ in the following manner: ‘[I]n the absence of a legislative definition, ‘charity’, [sic] 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.’ *In re Estate of Weiler: The Planned Parenthood Ass’n of Columbus, Ohio Inc. v. Tax Commissioner* (1966), 5 Ohio St. 2d [sic] 117. The applicant uses the subject property as the location of administrative offices and classrooms, related to operation and oversight of its member congregations. The record reflects that the applicant uses the facility to facilitate the spread of the gospel and to support public worship, at each of its member congregations.

“Whether the applicant seeks exemption pursuant to R.C. 5709.07 or R.C. 5709.12, property used as the administrative headquarters for a church or congregation is taxable. In this case, the property is being used for purposes that are merely supportive of public worship. The Ohio Supreme Court reiterated this view on similarly

used property in *Christian Church of Ohio v. Limbach* (1990), 53 Ohio St.3d 270 at 271:

“The activities conducted at the property consisted of general supervision of member churches and cooperative programs for religious training, the establishment of new churches, staff training, counseling, and providing Christian ministry on college campuses. No public worship services were conducted on the subject property.’

“It is not enough that property is used only in support of public worship. We held in Faith Fellowship Ministries v. Limbach (1987), 32 Ohio St. 3d [sic] 432, 513 N.E. 2d [sic] 1340, at paragraph two of the syllabus: ‘To qualify for 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 the public worship.’ In Faith Fellowship, supra, we dealt with multiple use of a complex of buildings and approved exemption for the parts of those buildings which were used in connection with the public worship being conducted within the complex. Thus, the property under review, to be entitled to exemption, must facilitate the public worship occurring on the premises.’

“Following the directives of the Supreme Court, only that part of the applicant’s property used for public worship on the premises qualifies for tax exemption. Property used for administrative offices for other churches does not qualify for exemption.” Statutory Transcript (“S.T.”) at 1-2.

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

“Applicant’s reasons for this appeal are that the Tax Commissioner erred in ruling, without any legal authority, that *‘[w]hether the applicant seeks exemption pursuant to R.C. 5709.07 or R.C. 5709.12, property used as the administrative headquarters for a church or congregation is taxable’*. [sic]. Applicant has applied for exemption, *not as a church* under R.C. 5709.07, but rather *as an institution that uses its property exclusively for charitable purposes* pursuant to R.C. 5709.12(B). ***

“The Ohio Supreme Court has held that whether the institution is religious or charitable is not a relevant factor; the relevant factor for determining exemption is *whether the institution is using the property exclusively for charitable purposes.* ***

“If operated without any view to profit, an institution used exclusively for the lawful advancement of education *and of religion* is an institution used exclusively for charitable purposes, within the meaning of [now R.C. 5709.12]. *Cleveland Bible College v. Bd. of Tax Appeals* (1949), 151 Ohio St. 258, paragraph one of the syllabus (*emphasis added*). When the primary purpose of the property is ‘an evangelistic one’ and ‘for the preparation and dissemination of a religious message’, [sic] the property is exempt from taxation under R.C. 5709.12. *True Christianity, Supra.* [sic] at 119. When the real property is used primarily ‘*to encourage people to read the Bible and live up to its moral standards*’, [sic] these efforts are ‘*a good faith attempt to disseminate information to spiritually advance and benefit mankind in general*’, [sic] and ‘under the definition of charity followed by this court, applicant’s activities constitute charitable purposes.’ *Id.* at 120 (*emphasis added*).

“The Ohio Supreme Court has clearly and concisely stated a simple two-prong test for determining exemption under R.C. 5709.12. The Commissioner has chosen not to apply that test. Thus, his unsupported conclusion that ‘the administrative headquarters for a church or congregation is taxable’, [sic] regardless of the charitable use of the property, is inconsistent with Ohio law and is clearly in error.” (*Emphasis sic.*)

At the hearing before this board, appellant presented the testimony of John D. Childers, a minister and ordained bishop for the Churches of God in Ohio. H.R. at 16. Bishop Childers also described himself as an administrative bishop or “pastor to the pastors.” *Id.* at 22. Counsel for the Tax Commissioner appeared at said hearing, but did not present any witnesses.

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. Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. In this regard, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner's determination is in error. *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 “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 present case, appellant sought exemption for the subject property pursuant to R.C. 5709.12.¹ R.C. 5709.12(B) provides, in pertinent part:

“Lands, houses, and other buildings belonging to a county, township, or municipal corporation and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes shall be exempt from taxation. Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.”

In *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, at 203, the court held that “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.” Essential for taking advantage of the R.C. 5709.12(B) exemption, however, is the requirement that the property must be owned by an institution. In *True Christianity Evangelism v. Tracy* (1999), 87 Ohio St.3d 48, the court held, “When considering a request for exemption under the portion of R.C. 5709.12(B) ***, the first point of inquiry must be whether the property belongs to an ‘institution.’” *Id.* at 50. Additionally, to qualify for exemption under R.C. 5709.12,

¹ Before we proceed to the merits of this case, we must note that appellant only sought exemption under R.C. 5709.12, and did not specify R.C. 5709.121 in its notice of appeal or in the application for exemption. Notice of appeal at 1-3, S.T. at 4. However, within its legal memoranda submitted to this board, appellant cited several cases that considered both R.C. 5709.12 and 5709.121. 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 an appellant before the Tax Commissioner. See *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134. Cf. *CNG Dev. Co. v. Limbach* (1992), 63 Ohio St.3d 28. Likewise, “a notice of appeal does not confer jurisdiction upon the Board of Tax Appeals to resolve an issue, unless that issue is clearly specified in the notice of appeal.” *Cleveland Elec. Illum. Co. v. Lindley* (1982), 69 Ohio St.2d 71, 75. See, also, *Kern v. Tracy* (1995), 72 Ohio St.3d. In *Queen City Valves, Inc. v. Peck* (1954), 161 Ohio St. 579, the court determined that the term “specify” means to “mention specifically, to state in full and explicit terms.” *Id.* at 583. Thus, we consider only R.C. 5709.12 in reviewing the instant matter. See *Oikos Community Dev. Corp. v. Zaino* (Nov. 9, 2001), BTA No. 2000-T-2037, unreported.

real property must not be used with a view to a profit, and cannot be in competition with commercial enterprises. *Am. Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38; *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 359. See, also, *Seven Hills Schools*, supra; *Seven Hills Schools v. Tracy* (June 11, 1999), BTA No. 1997-M-1572, unreported; *Youngstown Area Jewish Fedn. v. Limbach* (June 30, 1992), BTA No. 1988-G-117, unreported; *Jewish Community Ctr. of Cleveland v. Limbach* (June 30, 1992), BTA No. 1988-A-124, unreported; and *Dayton Art Inst. v. Limbach* (June 19, 1992), BTA No. 1986-A-521, unreported.

In *Highland Park Owners Inc. v. Tracy* (1994), 71 Ohio St.3d 405, the court defined the term “institution” as:

“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). ***”
Id. at 407.

Under this definition of “institution,” there is no specific requirement for an entity to have corporate status in order to be an institution, but it may be any organization or organized society. See, e.g., *Thomaston Woods L.P. v. Lawrence* (June 15, 2001), BTA No. 1999-L-551, unreported (holding that a for-profit limited partnership qualifies as an institution under R.C. 5709.12). Here, the commissioner does not contest that appellant is an institution, finding that under *Highland Park Owners*, supra, appellant qualifies as an institution. S.T. at 2. We agree with the commissioner’s finding. As the record reflects that appellant is a corporation and a

church, appellant is an institution based upon the definition set forth in *Highland Park Owners*.

We now review the record to determine whether appellant was “making exclusive charitable use” of the subject property. *White Cross and Highland Park Owners*, supra. While the General Assembly has not defined what activities of an institution constitute charitable purposes, the Supreme Court of Ohio held in *Planned Parenthood Assn. of Columbus, Inc. v. Tax Commr.* (1966), 5 Ohio St.2d 117, paragraph one of the syllabus, that:

“[I]n 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.”

The phrase “used exclusively” has been interpreted by the Ohio Supreme Court to mean primary use. *True Christianity*, supra. The court commented further in regard to what constitutes charitable use in *Bethesda Healthcare, Inc. v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749, at ¶ 39, stating,

“Whether an institution renders sufficient services to persons who are unable to afford them to be considered as making charitable use of property must be determined on the totality of the circumstances ***.”

We emphasize that the burden rests with appellant to prove by competent and probative evidence that the subject property was used exclusively for charitable purposes. In reviewing appellant’s exemption application, we first restate its answer to

question 14 of the application, which inquires as to how the subject property is being used:

“State Executive Offices and Ministry Training Center for Church of God in Northern Ohio, Inc. Office and support staff for Administrative Bishop, who oversees 121 congregations from I-70 north to Lake Erie, including 400 ordained ministers and 27,000+ parishioners. Conference rooms and classrooms used for church leadership meetings and ministerial teaching and training. Offices for Youth and Christian Education, Women’s Ministries and Department of Evangelism and Home Missions. Facilitating the proclamation of the Gospel of Jesus Christ and supporting public worship.” S.T. at 4.

At the hearing before this board, Bishop Childers testified at length regarding how the subject property is used, and the various duties of the employees on staff at the office. Additionally, several exhibits were presented by appellant that provided an overview of appellant and its operations, including its size, denomination, mission, and the role of Bishop Childers. H.R., Exs. A-D. Also included were architectural renderings, photographs of the interior and exterior of the subject property, and photographs of administrative offices and employees. *Id.* at Exs. E-1 to G-11.

Initially, we note appellant’s non-profit status under section 501(c)(3) of the Internal Revenue Code, which it has held since at least 1972. S.T. at 12. Also, the record indicates that appellant is not in competition with commercial enterprises. In addition to Bishop Childers’ testimony and the documents submitted at the hearing before this board, appellant’s articles of incorporation provide guidance as to appellant’s corporate purpose:

“A) To promoting the cause of christian religion in accordance with the rules, regulations, canons, tenants and customs of the Church of God with headquarters in Cleveland, Tennessee;

“B) To acquire by gift, devise, purchase or otherwise, real, personal and mixed property and to hold such property in trust for the use and benefit of congregations and churches of God in the Northern part of the State of Ohio; to sell, convey, exchange or otherwise dispose of such property and to lease, mortgage, pledge or otherwise encumber such property; and to build, equip and maintain churches, mansus [sic] and other appurtenant religious structures[;]

“C) To borrow money and to issue, sell or pledge bonds, debentures, promissory notes and other obligations or evidences of indebtedness, payable a specified time or times, or payable upon the happening of a specific event or events, whether secured by mortgage, pledge or otherwise, of all or a part of the assets or property of this corporation[;]

“D) To loan money to or guarantee any indebtedness of any local Church of God to aid and assist such local church to build, erect, buy or acquire real estate for the purpose of building or erecting church buildings or places of worship[;]

“E) To do all things, perform all acts and exercise all powers conferred upon corporations not for profit by Chapter 1702 of the Ohio Revised Code as it exists or is hereafter amended as may be necessary or incidental to any of the purposes stated herein[;]

“F) In the event this corporation is no longer functioning or discontinues its operation ***.” S.T. at 10.

A review of appellant’s articles of incorporation and the functions of the office, as provided by Bishop Childers’ testimony and other documents in the record, indicates that the offices located at the subject property are used to carry out the enumerated purposes of appellant. These purposes constitute *both* the spread of

religion and the necessary business functions of operating a corporation, such as acquiring assets, borrowing money, and, as it relates to supporting other churches associated with appellant, loaning money or guaranteeing indebtedness. S.T. at 10. Therefore, we find that appellant is not making *exclusive* charitable use of the property, as it uses the subject property to conduct administrative and corporate functions. *White Cross*, supra and *Ohio Nurses Assn. v. Levin* (Nov. 4, 2008), BTA No. 2007-N-148, unreported. These functions include, but are not limited to, employee and church member training, board of director's meetings, employee oversight, treasury duties, secretarial support, and training support. H.R. at 38, 39, 44, 54-56, 66-67, 69.

With regard to the primary use of the offices, the record clearly indicates that the administrative and corporate function is the primary use of the subject property. *True Christianity* and *Ohio Nurses*, supra. As appellant is a church, all of its support functions will necessarily be related to religion and the promotion of religion. However, this does not negate the fact that its offices are primarily used to fulfill the corporate duties as outlined in its articles of incorporation. Further, while the general public may enter appellant's offices, the record indicates that employees and church members primarily use the offices in conducting church activity. Additionally, while activities conducted in the offices may help to assist those in need, the offices are not used exclusively to provide services to those who cannot afford them. *Bethesda*, supra.

In summary, while appellant's offices located on the subject property may impact the public by promoting religion through the support of its churches and

employees, it is clear that this is not the primary use of the subject property. Appellant, as evidenced by the record and, specifically, the documents contained in the record that outline the business functions of its offices, does not use the subject property primarily and exclusively for charitable purposes. *White Cross, Highland Park Owners*, and *True Christianity*, supra. Its primary purpose is to use the subject property to support the enumerated purposes outlined in its articles of incorporation, and therefore does not qualify for an exemption under R.C. 5709.12. As such, appellant has not proven by competent and probative evidence that it is entitled to the requested exemption. *Federated*, supra.

While we empathize with appellant's position and recognize its social importance, we must apply the law to the facts before us. Cf. *Rickenbacker Port Auth. v. Limbach* (1992), 64 Ohio St.3d 628, quoting *Toledo Business & Professional Women's Retirement Living, Inc. v. Bd. of Tax Appeals* (1971), 27 Ohio St.2d 255. Therefore, we find the final determination of the Tax Commissioner to be according to law, and affirm such determination.²

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² In its reply brief to this board, appellant's counsel stated that, pursuant to the Ohio Supreme Court's recent decision in *Sylvania Church of God v. Levin* (2008), 188 Ohio St.3d 260, 2008-Ohio-2448, it wished to withdraw its request for a partial year remission of 2002 taxes.