



before this board, the property owner did not attend and the Tax Commissioner presented no witnesses or additional exhibits, choosing to rely on the statutory transcript.

In his final determination, the Tax Commissioner states, in relevant part, as follows:

“The Tax Commissioner finds that the [subject] real property \*\*\* is used as a cemetery and is exempt from taxation under R.C. 5709.14, graveyard.

“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 *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 January 15, 2002. Therefore, exemption cannot be reviewed for 2001 and 2002.” S.T. at 1.

Consistent with the facts as stated by the commissioner, Alderwoods indicated that it acquired title to the subject property on January 15, 2002 and that another entity was the titled owner on January 1, 2002. S.T. at 7, 22-23; notice of appeal.

In reviewing appellant’s appeal, we recognize the presumption that the findings of the Tax Commissioner are valid. See *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121, 123. It is therefore incumbent upon a taxpayer challenging a finding of the commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135, 143; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138, 142. Moreover, 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, 215.

In Ohio, all real property is subject to taxation. R.C. 5709.01. Exemption from taxation is the exception to the rule. *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186. Statutes granting exemptions from taxation must be strictly construed and the burden of establishing exemption is on the taxpayer. *Id.*; *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407, at paragraph two of the syllabus; *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 201; *Am. Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38, 40. See, also, *Willys-Overland Motors, Inc. v. Evatt* (1943), 141 Ohio St. 402; and *Goldman v. Robert E. Bentley Post* (1952), 158 Ohio St. 205.

Since the commissioner granted exemption as to 2004 and agreed to remit the tax, penalty and interest for 2003, the only issue before this board is Alderwoods' assertion that it is entitled to remission for tax years 2001 and 2002. It is well established that tax-exempt status is determined as of the relevant tax lien date. *Episcopal School of Cincinnati v. Levin*, 117 Ohio St.3d 412, citing *Christian Benevolent Assn. of Greater Cincinnati, Inc. v. Limbach* (1994), 69 Ohio St.3d 296. See, also, *Southside Community Dev. Corp. v. Levin*, 119 Ohio St.3d 521, 2008-Ohio-4839 (holding that to qualify for remission of tax, the applicant must own the property on the lien date of the prior year for which the tax benefit of an exempt use is claimed). We find that Alderwoods acquired title to the subject property on January 15, 2002 and, therefore, was not the titled owner on January 1, 2002, the relevant tax

lien date at issue. Consequently, we find Alderwoods has not met its burden by presenting evidence to establish a right to remission for 2002 and 2001.

Accordingly, it is the decision and order of the Board of Tax Appeals that the Tax Commissioner's final determination is affirmed.

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