

**OHIO BOARD OF TAX APPEALS**

True Praise and Deliverance )  
Ministries, Inc., )  
 ) (REAL PROPERTY TAX EXEMPTION)  
 Appellant, )  
 )  
 vs. )  
 )  
 Richard A. Levin, )  
 Tax Commissioner of Ohio, )  
 )  
 Appellee. )

CASE NO. 2007-M-530

DECISION AND ORDER

**APPEARANCES:**

For the Appellant - Stumphauzer, O’Toole, McLaughlin,  
McGlamery & Loughman Co., LPA  
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For the Appellee - Richard Cordray  
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Entered May 12, 2009

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed herein on July 12, 2007. This appeal is from a determination of the Tax Commissioner, appellee, wherein said official considered an application for exemption from real property taxation filed by the appellant. Through his final determination, the commissioner split-listed the property, granting exemption to the improvements on the subject property and 10 acres. The Tax Commissioner

denied exemption to the remaining 7 acres. It is the Tax Commissioner's determination regarding the 7 acres that appellant challenges by appeal to this board.

The matter is considered upon the statutory transcript submitted to this board by the Tax Commissioner, the record of the hearing held before this board and the legal arguments submitted by the parties. At the hearing before this board, Pastors Donald and Tondia Vilyus appeared and testified regarding the purchase and the subsequent use of the property by True Praise and Deliverance Ministries, Incorporated ("True Praise"). Pastor Donald Vilyus testified that True Praise originally purchased the property, a single parcel of land improved with an A-frame house and metal canopy used as garage space, in 1999.

The parcel under consideration is long and narrow. The church sits to the rear of the parcel and a driveway runs the length of the property, from the road to the church. The A-frame house was reconfigured for use as a sanctuary and gravel was added to the driveway after the property was purchased. Approximately six months after purchase, the church began to use the property for services, bible school, and fellowship.

Pastor Donald Vilyus further testified that the church did not apply for exempt status for the subject property until a suggestion was made by a visitor to the church from the Lorain County Auditor's office that the property would so qualify. At that time, True Praise applied for exemption from real property taxation. Upon the filing of the application, a representative of the Tax Commissioner's Division of Tax Equalization sought additional information. S.T. at 39. In response to the request to

“please describe, in detail, the use of the property from 1/1/00 to the present time” and to “please provide a sketch or map of property listing the use of each area,” Pastor Tondia Vilyus provided a hand-drawn map of the subject property showing the church building, the parking area, and the storage canopy, as well as the gravel drive. The map also identified the front portion of the parcel as “Empty field.” S.T. at 16.

Pastor Vilyus also provided the following letter:

“Since obtaining the property \*\*\*, it has been used as our sole meeting place for our church. We weekly meet on Sundays for Christian education, followed by a Morning Worship service. Sunday evening is again a time of worship. Monday evening, the church is open for corporate prayer. Wednesday evening is used for our weekly Bible study. Friday night the church is open for the Youth ministry, for teach [sic] and fun.

“Annually, we host a week long Summer Vacation Bible School at no cost to those attending. We have clothing, food and household need drives, and donate to those in need. We conduct Revival, and seminar sessions to further meet the spiritual growth and development of those in the congregation and surrounding areas.

“Our plans include building a new church and facilities at the front of the property to further the mission and ministry of True Praise Ministries. This will further develop our property to include a Fellowship Hall, picnic area, walking path and a playing field for sports activities.” S.T. at 12.

Considering all the information presented to him, the Tax Commissioner concluded that True Praise’s property was properly split-listed. The Tax Commissioner provided two reasons for his determination. First, the Tax Commissioner found that the property intended to be used as a playing field for sports

activities would not qualify for exemption under R.C. 5709.07, as sporting activities do not meet the definition of public worship as found in R.C. 5709.07.

The Tax Commissioner next concluded that if it were True Praise's intention to construct a new church and fellowship hall,<sup>1</sup> two uses that would fit under the definition of public worship, its plans were not sufficiently definite to be entitled to exemption. The Tax Commissioner stated that, although case law allows property to be exempt based upon its prospective use, True Praise had not provided sufficient information "reflecting that a new fellowship hall \*\*\* will be constructed within a reasonable amount of time since the application for exemption was filed." S.T. at 2.

On appeal, True Praise argues that the entire property should be exempt for tax year 2004<sup>2</sup> because the entire property was, and remains, in use as church grounds. True Praise agrees that it has not made definitive plans to construct anything on the subject property. It is for that reason, True Praise argues, that the entire property should be entitled to exemption.

True Praise contends that the additional uses described by Pastor Tondia Vilyus in her letter to the Tax Commissioner's agent were merely a "wish list" for future plans. Those additional uses had not been approved by the church governing body, nor had funding been allocated for any of the purposes described. Therefore, True Praise argues its use of any portion of the property remained the same as the use

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<sup>1</sup> There is no explanation as to how the Tax Commissioner determined that 10 acres of the 17-acre parcel should be entitled to exempt status and 7 acres should not. Pastor Tondia Vilyus' map was not drawn to scale nor did it identify which part of the property was to be improved with a new church and which part was to be improved by athletic fields.

<sup>2</sup> While True Praise's initial application sought property tax remission for four years prior to the year of exemption, R.C. 5713.081 prescribes remission for only the three years preceding the year of exemption.

for the property upon which the actual church stood – that of property used exclusively for public worship.

We begin by acknowledging the duties imposed upon the Board of Tax Appeals when reviewing a decision of the Tax Commissioner. The Tax Commissioner’s findings are entitled to a presumption of correctness, and it is incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121; *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St. 2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner’s determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

As to the law relating to exceptions from taxation, exemption from tax is an exception to the rule that all property is subject to taxation, and therefore a statute granting such an exemption must be strictly constructed. *Nat. Tube Co. v. Glander* (1952), 157 Ohio St. 407; *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199.

R.C. 5709.01(A) subjects all real property located in Ohio to taxation, except as expressly exempted by statute. The General Assembly is empowered by the Ohio Constitution to pass laws to exempt certain types of property. Section 2, Article XII, of the Ohio Constitution reads:

“\*\*\* 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 this constitution, to determine the \*\*\* 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, \*\*\*.”

R.C. 5709.07(A)(2) exempts from taxation “[h]ouses 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 \*\*\*.” Although 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 merely calculating the amount of time that the property is used in a taxable as opposed to a nontaxable manner. Instead, 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. The court reaffirmed the use of the “primary use” test in determining qualification for exemption pursuant to R.C. 5709.07 in *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, 120, holding, “The General Assembly has used the phrase ‘used exclusively’ as a limitation in both R.C. 5709.07 (houses used exclusively for public worship) and R.C. 5709.12 (property used exclusively for charitable purposes).”

The Tax Commissioner found through his final determination that “a portion of the subject property is designated for recreational purposes.” S.T. at 1. The Tax Commissioner also found that the requirements of R.C. 5709.07 may be satisfied by “prospective use,” or the manner in which the property will be used in the future. However, True Praise does not argue that its property should be exempted because of the manner in which the property is to be used in the future. Pastor Donald Vilyas testified that the church has no plans for redevelopment of its property. H.R. at 24. Pastor Tondia Vilyas confirmed that the letter provided to the Tax Commissioner constituted only her own vision of the subject property. H.R. at 28.

The church purchased a single parcel of land. The land in issue is, in effect, the church’s front lawn. Admittedly, the parcel is 17 acres and there is room to redevelop some of the acreage for a different use. However, True Praise did not identify 7 acres as “excess property.” Pastor Tondia Vilyus did identify a portion of the church’s property as an “empty field” and answered in the affirmative when asked if the property is “vacant and unused.” S.T. at 16, H.R. at 29. However, neither answer conflicts with the conclusion that the church itself sits on a 17-acre parcel of land and the church itself is in use as a place of worship.

We do not find the case law to which the Tax Commissioner turns to support his finding apposite. The Tax Commissioner refers to the non-exempt status of Building G in *Faith Fellowship Ministries, Inc.* (1987), 32 Ohio St.3d 432, but the decision clearly states that Building G was originally built as a residence, a use excluded under R.C. 5709.07. The Tax Commissioner also refers to *Welch Ave.*

*Freewill Baptist Church v. Kinney* (1983), 10 Ohio App.3d 196. That case affirmed the denial from exemption under R.C. 5709.07 for a 7.246-acre tract of land which the court found not currently used for any purpose. However, that tract of land was adjacent to the tract of land upon which a church was located. *Id.* In the present appeal, the church is located on the tract of land in issue. The qualification for exemption of a separate tract was also the issue in *Home Missioners of Am. v. Wilkins* (Dec. 15, 2006), BTA No. 2005-R-713, unreported. The issue in the present appeal is the tract of land upon which the church is located. But, see, *Hope Christian Church v. Wilkins* (Mar. 25, 2008), BTA No. 2005-T-1732, unreported.

There is no question that the Tax Commissioner has the authority to split list a single parcel of land in accordance with its use. R.C. 5713.04 provides:

“If a separate parcel of improved or unimproved real property has a single ownership and is so used so that part thereof, if a separate entity, would be exempt from taxation, and the balance thereof would not be exempt from taxation, the listing thereof shall be split, and the part thereof used exclusively for an exempt purpose shall be regarded as a separate entity and be listed as exempt, and the balance thereof used for a purpose not exempt shall, with the approaches thereto, be listed at its taxable value and taxed accordingly.”

In this case, however, the Tax Commissioner found that the property in question, currently in use in the same manner as the remainder of the property, was intended for a different purpose. That factual conclusion is not supported by the record.

True Praise has brought forth evidence that it was not its intent to use the property as a separate entity, but as a part of the whole, the entrance to its church. This board has previously concluded that a parcel of land upon which a driveway

leading to a parking lot is located is exempt as necessary for the proper use, occupancy, and enjoyment of the house of worship. *Leroy Jenkins Evangelistic Association v. Lawrence* (Nov. 9, 2000), BTA No. 1999-J-1089, unreported. This board has also concluded that an abandoned playground and baseball diamond that is sometimes used by church members is exempt from taxation. *Springhill Church of Christ v. Limbach* (Sept. 16, 1988), BTA No. 1987-H-317. In *Springhill Church*, this board cited *Gerke, Treas., v. Purcell* (1874), 25 Ohio St. 229, a seminal case construing the exemption applicable to houses of worship:

“The express authority given in the constitution to exempt buildings of the description named, carries with it, impliedly, authority to exempt such grounds as may be reasonably necessary for their use. The ground in such case becomes annexed to the building as an incident; but the ground so annexed must subserve the same exclusive use to which the building is required to be devoted.

“It is not required that the ground should be indispensable to the use of the building as a place of worship. If the ground is no more than is reasonably appropriate to the purpose, and is used for no other, it comes fairly within the limits prescribed by the constitution and the statute.” *Id.* at 248.

The subject property is a single parcel of land, in use as a church. The property, while not indispensable to the use of the church’s building as a place of worship, is reasonably appropriate to that purpose. Therefore, this board concludes that the Tax Commissioner erred when he split-listed the property. The entire parcel is entitled to exemption.

Considering the record, statutes, and case law, this Board of Tax Appeals finds the Tax Commissioner's final determination must be, and hereby is, reversed.

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