

Northcoast Christian Center)	
)	
Appellant,)	CASE NO. 96-M-811
)	
vs.)	
)	(Exemption)
Roger W. Tracy,))	
Tax Commissioner of Ohio,)	
)	DECISION AND ORDER
Appellee.)	

APPEARANCES:

For the Appellant-	K. Ronald Bailey K. Ronald Bailey & Assoc., Co. L.P.A. P.O. Box 830 Sandusky, Ohio 44871-0830
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For the Appellee-	Betty D. Montgomery Attorney General of Ohio By: Richard C. Farrin Assistant Attorney General State Office Tower 30 East Broad Street 16th Floor Columbus, Ohio 43266-0410
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Entered July 18, .1997

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed herein on June 28, 1996. Appellant appeals from a Journal Entry of the Tax Commissioner, appellee herein, wherein the Commissioner denied appellant's application for real property exemption for tax year 1994.

The appellant, Northcoast Christian Center, is an evangelical church formed in 1991 and located in Sandusky, Ohio. In 1993, the Church contracted with Perkins Plaza, Inc. to lease a former four-bay movie theater located in the rear of a strip shopping center. The Church made significant modifications to the building, removing walls and redesigning many of the spaces for uses necessary to its ministry.

The original term of the lease is ten years. The lease agreement also obligates the Church to pay its pro-rata share of real estate taxes and assessments.

On December 30, 1994, the Church applied for exemption from real property taxation for that portion of the subject property which was equal to its pro-rata share of real property taxes paid to the lessor. The Commissioner denied the application. The Commissioner first found that "[t]he subject property is unquestionably used by the applicant as a house of public worship". However, the Commissioner concluded that exemption was not proper.

Referring to the language "not leased or used with a view to profit" contained in R.C. 5709.07, the Commissioner indicated that the property was managed by a for-profit property management corporation, and then concluded that the payment of \$21,105 annually to a for-profit corporation was a prima facie showing that the property was leased "with a view to profit".

An appeal to this Board ensued. Not only did appellant specify as error the Commissioner's findings relative to R.C. 5709.07, it also raised constitutional arguments under both the Ohio and United States Constitutions. While the proper forum to

raise such issues, this Board is a mere repository of evidence relating to constitutional questions and has no authority to consider the legal issues raised. MCI Telecommunications Corp. v. Limbach (1994), 68 Ohio St. 3d 195.

The matter is considered upon the notice of appeal, the testimony and other evidence presented at the hearing before this Board, and the argument presented by counsel.

R.C. 5715.27(A) permits the "owner of any property" to file an application for the exemption of real property from taxation. A lessee who is obligated to pay real estate taxes assessed against the real property has standing to file such an application. Cleveland St. Univ. v. Perk (1971), 26 Ohio St. 2d 1. The Commissioner did not question appellant's standing to apply for exemption, but found that the requirements of R.C. 5709.07(A)(2) had not been met. We hold appellant has standing to make an application for exemption in the instant case.

The Commissioner rejected appellant's application because appellant leased property from a for-profit organization. The Tax Commissioner found, as a matter of law, that the lessor's profit from the lease with appellant vitiated the statutory exemption conferred upon houses of worship. This Board finds that the Commissioner's determination is based upon a misreading of 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 property occupancy, use and enjoyment;

"(C) As used in this section, '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."

In Bexley Village, Ltd. v. Limbach (1990), 68 Ohio App. 3d 306, the Franklin County Court of Appeals had the opportunity to consider the propriety of granting exemption under R.C. 5709.07(A) to real property leased by a university. Both Bexley Village, Ltd., a for-profit corporation, and its lessee, Capital University, applied for exemption from real property taxation of a parcel of land owned by Bexley Village, Ltd. and leased to the University. The Commissioner denied exemption, but this Board found exemption to be proper. Upon appeal, the Court of Appeals considered whether the leasehold interest indicated that the property was "used with a view towards profit". (While the yearly rental in that case was \$1.00, the appellant argued that the for-profit lessor profited by avoiding real property taxes and maintenance expenses it would have incurred.)

The Court of Appeals recognized that the words "used with a view towards profit" are not uncommon throughout the exemption statutes. The Court then reviewed two Supreme Court cases which

considered whether a leased property was "used with a view towards profit." Both Rose Inst. v. Myers (1915), 92 Ohio St. 252, and State, ex rel. Boss v. Hess (1925), 113 Ohio St. 53, were cases in which a charitable and an educational organization were each denied exemption for property leased for a profit to non-exempt lessees even though the proceeds garnered from the leases were used for exempt purposes. Finding that critical emphasis was placed upon the use of the property, rather than ownership, the Court held:

"Where the property is used for educational purposes, the property is exempt from taxation even though it produces income for its true owner. When applying the phrase 'not used with a view to profit' found in R.C. 5709.07, the court should focus on the use to which the property is put by the party entitled to exemption under the statute."

Following the Court's directive in Bexley Village, Ltd., this Board must focus on the use the property is put by the party entitled exemption under the statute. We return to the Commissioner's finding that the appellant qualifies as a "house of public worship". The testimony before this Board is consistent with the Commissioner's findings. The Board further finds that the lease by which appellant obtains the right to use the property is not a bar to exemption.

Our holding herein is consistent with the Supreme Court's consideration of "charitable use" under R.C. 5709.12. In Highland Park Owners, Inc. v. Tracy (1994), 71 Ohio St. 3d 405, the Court, citing Gerke v. Purcell (1874), 25 Ohio St. 229, for the proposition that exemption from taxation is controlled by the use

