

# OHIO BOARD OF TAX APPEALS

University of Cincinnati Medical Associates, Inc.,	)	
	)	CASE NO. 99-A-1411
	)	
Appellant,	)	(EXEMPTION)
	)	
vs.	)	DECISION AND ORDER
	)	
Thomas M. Zaino, Tax Commissioner of Ohio,	)	
	)	
	)	
Appellee.	)	Vac'd & Rem'd on Appeal May 16, 2003 Ohio Supreme Court

## APPEARANCES:

For the Appellant - Joel S. Brant  
James F. McCarthy  
Katz, Teller, Brant & Hild  
255 East Fifth Street, Suite 2400  
Cincinnati, Ohio 45202-4724

For the Tax Commissioner - Betty D. Montgomery  
Attorney General of Ohio  
By: Richard C. Farrin  
Assistant Attorney General  
State Office Tower  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

Entered: October 4, 2002

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a journal entry of the Tax Commissioner. Therein, the Tax Commissioner denied appellant's application for the

exemption of certain real property from taxation for tax year 1997, but granted remission of all penalties for said tax year.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to the board by the Tax Commissioner, the testimony presented at a hearing before this board, and the briefs submitted by counsel to both parties.

In reviewing appellant's appeal, we first recognize the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut that presumption and establish a right to the relief requested. *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.

We also acknowledge the general proposition that statutes granting exemption from taxation must be strictly considered. *National Tube Co. v. Glander* (1952), 157 Ohio St. 407, paragraph two of the syllabus; *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 201. "Exemption is the exception to the rule and statutes granting exemptions are strictly construed." *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186.

In the instant matter, appellant appeals from the Tax Commissioner's journal entry, which states, in pertinent part, as follows:

"This matter concerns an application for the exemption of real property from taxation. On June 4, 1999 the attorney examiner issued a recommendation to deny the application. On July 1, 1999 the applicant filed written objections to that recommendation. In addition, the applicant amended

the application to request exemption for the property in question under R.C. 3345.17.

“In its objections the applicant states that it leases approximately 25% of the building to the Health Alliance of Greater Cincinnati. All revenues generated are used to cover the costs of operating the property, and any surplus is used to reduce the rent of the Practice Corporation. It is well settled law in Ohio that it is the present use of the property rather than the ultimate use of the proceeds from the property that determines whether the use is for an exempt purpose. \* \* \* Therefore, the part of the property that is leased to the Health Alliance of Greater Cincinnati does not satisfy the requirements for exemption, \* \* \* regardless of how the revenues generated from this lease are used.

“In addition, the applicant asserts that, because of its relationship with the University of Cincinnati, the part of the property that is used by the Practice Corporation qualifies for exemption under R.C. 5709.07(A)(4) which provides exemption for ‘(p)ublic colleges and academies and all buildings connected with them, and all lands connected with public institutions of learning, not used with a view to profit.’ If this section were to apply, then the University of Cincinnati must be a public college within the meaning of this section. Pursuant to R.C. 3345.01, the University of Cincinnati is specifically recognized as a state university, and property of trustees of state universities must satisfy the requirements for exemption as set out in R.C. 3345.17. The Ohio Supreme Court has held that in order for property to be exempt, the property must qualify under the statute that specifically applies to that property rather than under the provisions of another statute. \* \* \* Based on these cases, R.C. 3345.17 is the specific section that would apply to property of universities, not R.C. 5709.07. Therefore, since an application for exemption for property of the University of Cincinnati would not be reviewed under R.C. 5709.07, then it follows that property of another entity would not be reviewed under this section based on its relationship with the university. For this reason, \* \* \* the property in question is not entitled to exemption under R.C. 5709.07.

“The applicant also objects to the recommendation that the property in question should not be exempt under R.C.

5709.12. To demonstrate that it is a charitable institution, it points out its status as a nonprofit organization. However, a nonprofit organization is not necessarily a charitable institution. \* \* \* In addition, the applicant has not adequately described the Practice Corporation, which uses this facility, and has not provided the Articles of Incorporation for this entity. It has not described the number of staff members at this facility, how many patients are treated, or the number of hours per week a medical student works there. The applicant has not shown that the primary purpose of this facility is to educate and train medical students and residents. To the contrary, it appears that this is merely an incidental use of the property. In addition, the patients are not treated without regard to their ability to pay. Since the applicant has not sufficiently described a use of the property that can be considered to be charitable, then it is not entitled to exemption under R.C. 5709.12.

“The property in question is owned by the applicant. It is not owned by the state for the benefit of the university, nor does the University of Cincinnati own or lease this property. Therefore, it is not property of a state university and is not entitled to exemption under R.C. 3345.17.

“The Tax Commissioner finds that the property described in the application is not entitled to be exempt from taxation and the application is therefore denied for the reasons set forth above and in the attached recommendation, which is incorporated into this entry.

“ \* \* \* ”

In its notice of appeal from the foregoing decision of the Tax Commissioner, the University of Cincinnati Medical Associates, Inc.<sup>1</sup> (hereinafter “UCMA”), specified the following errors:

“(a) The Tax Commissioner incorrectly found that the Property did not qualify for exemption from taxation of

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<sup>1</sup> In December 1999, UCMA underwent a name change to “University of Cincinnati Physicians, Inc.” In addition, the number of members on the board of trustees was also reduced, but no other changes were made. Accordingly, although no longer known as UCMA, all discussions in the instant opinion will refer to appellant as UCMA, its name during the year in question.

real property under either R.C. 5709.07, R.C. 5709.12, or R.C. 3345.17. \* \* \* (t)he Taxpayer believes that the Property qualifies for exemption under R.C. 5709.12, or, in the alternative, the Property qualifies for exemption under R.C. 5709.07 or R.C. 3345.17.

“(b) The Tax Commissioner erred in finding that the Property does not qualify for exemption from taxation of real property under R.C. 5709.12. In order to qualify for exemption under R.C. 5709.12 the property must (1) belong to an institution and (2) be used exclusively for charitable purposes. The Tax Commissioner found that the Taxpayer is an institution. However, the Tax Commissioner erred in finding that the Property is not used for charitable purposes. The Taxpayer believes the Property is used for charitable purposes. The Taxpayer is a nonprofit organization formed exclusively for charitable, educational and scientific purposes and is exempt from tax under Section 501(c)(3) of the Internal Revenue Code.\* \* \*

“(c) The Tax Commissioner erred by failing to analyze whether the Property meets the requirements of R.C. 5709.121. \* \* \* The taxpayer believes \* \* \* that the Property meets each of the requirements of R.C. 5709.121 and, therefore, must be found to be used exclusively for charitable purposes. The Tax Commissioner erred by not finding that the Taxpayer is a charitable or educational institution entitled to the benefits of applying R.C. 5709.121, by not finding that the Property met each of the requirements of R.C. 5709.121, and by not even analyzing whether the Property met the requirements of R.C. 5709.121.

“(d) The Tax Commissioner erred in finding that the Property did not qualify for exemption under R.C. 5709.07. Specifically, the Tax Commissioner erred in finding that the Property does not qualify under R.C. 5709.07(A)(4). The Taxpayer believes that, because of its relationship with the University of Cincinnati, the property qualified for exemption under R.C. 5709.07(A)(4). \* \* \* The Taxpayer believes the Tax Commissioner is incorrect in finding that the relationship with the University of Cincinnati disqualifies the Property from applying for exemption under R.C. 5709.07(A)(4). Since the Property is connected with a public institution of learning and not used with a

view to a profit, the Taxpayer believes the Property qualifies for exemption under R.C. 5709.07(A)(4).

“(e) The Tax Commissioner erred in finding that the Property did not qualify for exemption under R.C. 3345.17.  
\* \* \*

“(f) The Tax Commissioner erred in failing to analyze in more detail whether the Property qualified for exemption under R.C. 5709.07 or R.C. 3345.17. \* \* \* The Tax Commissioner’s circular and inconsistent reasoning has deprived the Taxpayer of obtaining any analysis of whether the Property qualifies for exemption under either R.C. 5709.07 or R.C. 3345.17.

“(g) The Tax Commissioner erred in finding that the part of the Property which is leased to the Health Alliance does not satisfy the requirements for exemption regardless of how the revenues generated by the lease are used. \* \* \* ”

According to Daniel Gahl, administrator of UCMA and Assistant Dean of Clinical Affairs for the College of Medicine, University of Cincinnati, appellant herein, UCMA, “is a tax-exempt charitable organization seated by the resolution of the Board of Trustees of the University of Cincinnati to provide those services in support of the University and College of Medicine’s mission of education, research and clinical practice.” (R., p. 21) When the Board of Trustees of the University of Cincinnati passed a resolution authorizing the formation of UCMA in November 1987 (Ex. 2), it specifically provided for the creation of an Ohio nonprofit, 501(c)(3) corporation, to be known as UCMA, and “to be organized and operated exclusively for educational, charitable, or scientific purposes by conducting and supporting activities which benefit, or carry out the purposes of the University of Cincinnati, but which shall not be engaged in the practice of medicine.” (Ex. 1, p. 1) Further, Articles Third and Fourth of the corporation’s articles of incorporation (Ex. 3) provide:

“THIRD: The Corporation is organized and shall be operated exclusively for educational, charitable and

scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, \* \* \* to conduct and support activities for the benefit of, to perform the functions of and carry out the purposes of the University of Cincinnati \* \* \* , principally with respect to the University's College of Medicine \* \* \* by support of its education and teaching, patient care and community service responsibilities by implementing a College Faculty Practice Plan for the University approved by the Trustees of the University \* \* \* , and to carry out such other activities as shall be approved by the Trustees of the Corporation.

“ \* \* \*

“FOURTH: The Corporation is formed not for pecuniary profit or financial gain. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its Trustees or officers, private individuals or organizations, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered, including payments to the University pursuant to agreements for services rendered to the Corporation by the University or its employees, to make payments for reasonable expenses of members of the Board of Trustees of the Corporation and to make payments and distributions in furtherance of the purposes set forth in Article THIRD hereof.”

Finally, UCMA, in its amended code of regulations (Ex. 4), sets forth its vision and mission as follows:

“The vision of University of Cincinnati Physicians, Inc. (‘UCP’) is to achieve unparalleled excellence in the delivery of clinical care by UCP’s Clinical Members. The mission of UCP is to support the Greater Cincinnati community and beyond through healing, teaching, and research. ‘Clinical Members’ shall mean (i) physicians, dentists, osteopaths and other health care practitioners of any class that may be designated from time to time by the Trustees, who are full-time members of the faculty of the College of Medicine of the University of Cincinnati (the ‘College’) whose appointment is in a clinical department, and who practice within a practice plan approved by the Dean of the College, and (ii) other health care practitioners

who qualify as Clinical Members under rules adopted from time to time by the Trustees.”

Thus, UCMA claims that it is an Ohio non-profit tax exempt organization under section 501(c)(3) I.R.C. which is organized exclusively for educational and charitable purposes. UCMA performs support administrative functions exclusively for the medical school departments and faculty practice plans associated with the university. (R., p. 49)

The subject property is located on Montgomery Road in Cincinnati, Hamilton County, and consists of a medical office building located on approximately 1.668 acres of land. “There are five tenants in the property. Three of the five tenants are practice corporations of the University of Cincinnati. The fourth is a joint venture between one of the practice corporations and another entity, and the fifth entity in that property is the Health Alliance of Greater Cincinnati.” (R., p. 13)

UCMA seeks exemption for the subject property, first, pursuant to R.C. 5709.07(A)(4). That section provides that “(P)ublic colleges and academies and all buildings connected with them, and all lands connected with public institutions of learning, not used with a view to profit” shall be exempt from taxation. However, we find that if UCMA seeks exemption from taxation on the basis of its relationship with the University of Cincinnati, then it more appropriately must seek exemption pursuant to R.C. 3345.17, which provides that “(A)ll property, personal, real or mixed of the boards of trustees \* \* \* of the state universities, \* \* \* and of the state held for the use and benefit of any such institution, which is used for the support of such institution, is exempt from taxation so long as such property is used for the support of such university or college.” Specifically, the Supreme Court, in *Rickenbacker Port Auth. v. Limbach* (1992), 64 Ohio St.3d 628, stated “ \* \* \* we essentially held in *Toledo Retirement [Toledo Business & Professional Women’s Retirement Living, Inc.*

*v. Bd. of Tax Appeals* (1971), 27 Ohio St.2d 255] that a property, to be exempt, must qualify under the criteria of the statute specifically applicable to that property. See, also, *Summit United Methodist Church v. Kinney* (1982), 2 Ohio St.3d 72, \* \* \* (primarily religious institution could not qualify for exemption under statute exempting property belonging to ‘charitable’ institution.)” In the instant matter, we are considering the University of Cincinnati, which is recognized and designated as a “state university” pursuant to R.C. 3345.011. As such, the exemption of property belonging to or associated with such university must be considered pursuant to R.C. 3345.17.

The subject property is owned by an Ohio non-profit, 501(c)(3) corporation, UCMA. Although formed by resolution of the Board of Trustees of the University of Cincinnati, it is neither owned by the University of Cincinnati nor by the state of Ohio. Therefore, the subject cannot be exempt pursuant to the provisions of R.C. 3345.17, which it clearly does not satisfy.

Next, appellant seeks exemption pursuant to R.C. 5709.12 or R.C. 5709.121. However, in its Application for Real Property Tax Exemption and Remission, appellant never sought exemption from taxation pursuant to R.C. 5709.121, only R.C. 5709.12. (S.T., p. 16) Accordingly, this board only has jurisdiction to consider the applicability of the claim raised by appellant before the Tax Commissioner and is restricted in its analysis to a discussion of R.C. 5709.12. See *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134; cf *CNG Development Co. v. Limbach* (1992), 63 Ohio St.3d 28.

R.C. 5709.12 provides that “real \* \* \* property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.” Two requirements exist for exemption under this section. 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.

In *Highland*, the Supreme Court, citing Black's Law Dictionary, defined "institution" as "(A)n 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 \* \* \* ." Based upon such description, we find that appellant meets the first requirement for exemption under R.C. 5709.12.

Next, under R.C. 5709.12, appellant must use the subject property exclusively for charitable purposes. The Supreme Court discusses exclusive use for charitable purposes in *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, when it cites paragraph one of the syllabus in *Am. Commt. of Rabbinical College of Telshe, Inc. v. Bd. of Tax Appeals* (1951), 156 Ohio St. 376, where it held "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 Section 2 of Article XII of the Constitution and of Section 5353, General Code [now R.C. 5709.12]." The court in *True Christianity* went on to state that "in past cases we have held 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 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." *Planned Parenthood Assn. of Columbus, Inc. v. Tax Commr.* (1966), 5 Ohio St.2d 117, \* \* \* paragraph one of the syllabus. It is against this definition that

appellant's activities must be measured to determine if they constitute a charitable purpose." Further, the Supreme Court held in *True Christianity*, supra, that there is no indication that the phrase "used exclusively" in R.C. 5709.12 should be interpreted any differently than it has been in R.C. 5709.07, where it has been held to mean "primary use." See *Moraine Hts.*, supra.

In evaluating appellant's activities, we first look to the Written Objection to Recommendation of the Attorney Examiner (S.T., p. 3-7), wherein appellant indicated that:

"UCMA provides facilities and services to medical practice corporations operated by the faculty of the University of Cincinnati College of Medicine (the 'Practice Corporations'). The Practice Corporations are corporations exempt from tax under 501 (c)(3) of the Internal Revenue Code. UCMA leases approximately 25% of the building to The Health Alliance of Greater Cincinnati. The remainder of the building is leased to the Practice Corporations at below fair market rents. All of the revenues generated from the Property are used to cover the costs of operating the Property. Any surplus is used to reduce the rent of the Practice Corporations."

In determining whether the subject's use is for an exempt purpose, we must consider the current use of the property rather than the ultimate use of the proceeds from the property. *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 359; *Incorporated Trustees of the Gospel Worker Society v. Evatt* (1942), 140 Ohio St. 185. Further, as the Supreme Court clearly stated, "it is the charitable activities of the taxpayer seeking the exemption which must be considered when reviewing an application for a charitable exemption," and not those of the taxpayer's lessees. *OCLC Online Computer Library Ctr., Inc. v. Kinney* (1984), 11 Ohio St.3d 198, 201.

In the instant matter, the appellant is leasing the subject property to medical practice corporations affiliated with the University of Cincinnati; in other words, the

appellant is a landlord. Regardless of its lessees' activities, which may or may not be "charitable" in nature, appellant may not claim a vicarious exemption through them for itself. See *OCLC*, supra; *National Church Residences v. Lindley* (1985), 18 Ohio St.3d 53. In *OCLC*, the appellant, a non-profit corporation, sought exemption for its facilities, from where it provided online computer information to libraries around North America. The court held that "(A)lthough OCLC's service may greatly enhance the ability of libraries to better serve the public, OCLC essentially offers a product to charitable institutions, for a fee exceeding its cost, and, as the board concluded, is not itself a charitable organization." Likewise, appellant merely provides the leaseable building space, at a reasonable cost, for certain medical groups, not unlike a commercial lessor of real property. While appellant arguably establishes its rents at a below-market level and uses the rents generated to only cover costs of operations and if any rent money is left after covering its costs, to reduce the rent charged to the practice corporations, appellant still charges rents to first, cover its own costs. Appellant is not giving away the space in its building rent-free and it is not, in turn, acting as a charity or for charitable purposes. See *Falls Masonic Temple Co. v. Limbach* (June 30, 1993), B.T.A. No. 90-A-1563, unreported. Further, appellant, itself, does not provide the medical care that is offered at the subject facility (Ex. 1, p. 1); it is merely the lessor of the building. While the lessee tenants/practice corporations and other health care providers may act as charitable organizations, it is not their use of the building, but UCMA's, which is relevant to the instant outcome.

Accordingly, based upon the foregoing, this board finds that appellant has not overcome the presumption of validity of the Tax Commissioner's determination. See

*Hatchadorian v. Lindley* (1986), 21 Ohio St.3d 66. Thus, this board finds that the Tax Commissioner's findings were not unreasonable and unlawful.

It is the decision and order of the Board of Tax Appeals that the decision of the Tax Commissioner must be and hereby is affirmed.

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