

IN THE SUPREME COURT OF OHIO

Northeast Ohio Psychiatric Institute	:	Case No. 2008-0033
	:	
Appellant,	:	
	:	
v.	:	
	:	(Appeal from the Ohio
William W. Wilkins [Richard A. Levin],	:	Board of Tax Appeals
Tax Commissioner of Ohio,	:	No. 2005-Z-1683)
	:	
Appellee.	:	

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MERIT BRIEF OF APPELLANT  
NORTHEAST OHIO PSYCHIATRIC INSTITUTE

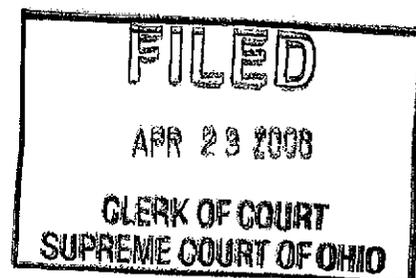
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### Preliminary Statement

The Board of Tax Appeals (“Board”) makes two mistakes in the Decision below. It unreasonably fails to recognize appellant Northeast Ohio Psychiatric Institute (“the Institute”) as a charitable institution, and unlawfully fails to apply the statutes that exempt the real property at issue from taxation. The Decision undermines those who serve a crucial public need to care for the mentally ill. It disqualifies a federally tax-exempt nonprofit dedicated to promoting mental health from property tax exemption because of incidental fundraising activities. The Decision constitutes a failure of logic, and misapplies Ohio law to the circumstances presented. Its outcome is at odds with *Community Health Professionals v. Levin* (2007), 113 Ohio St.3d 432, 2007-Ohio-2336, 866 N.E.2d 478.

The Institute is a *wholly-controlled* subsidiary of Portage Path Behavioral Health (“Portage Path”). Portage Path is clearly a charity, as the Board has recognized. (Appx. 15, Decision at 7.) Portage Path runs a socially indispensable operation with a budget of over \$10 million per year, providing services to mentally ill and chemically dependent citizens of Summit County, protecting the public from those dangerous to themselves or others, preventing suicides, and minimizing psychiatric hospitalization. (Supp. 93-94, 271, Tr. 59-61, Ex. 17.) It is structured so that the Institute under its control holds property to lease to it. The Institute’s sole purpose is to support public mental health, a goal supported by all of its activities. In fact, *the Board recognized that “Northeast’s [the Institute’s] purpose” is “to support mental health services in the Summit County area . . .”* (Appx. 17, Decision at 9, emphasis added.) The Board deems this purpose “admirable” (id.), but unreasonably fails to reach the legal conclusion

that follows: that this charitable purpose, coupled with operations that abnegate profit, make the Institute a charity under Ohio law.

The record demonstrates that the Institute leases space to Portage Path *at or below cost*. The Institute also carefully stewards resources so as to maximize support for public mental health by, for instance, leasing unneeded space and placing psychiatric staff with hospitals, mental health agencies and mental health counseling services, so that it can use any proceeds in support of its sole charitable purpose to support public mental health.<sup>1</sup> These incidental activities may generate minor net gain or net loss, in various years. For example, in the years 2003 and 2002 on which the Decision focuses, the Institute's financial statements show net loss of (-\$13,413) in 2003 and net gain of \$3,254 in 2002. (Supp. 276, Ex. 18, p. 3.)<sup>2</sup> Any gain is devoted to offsetting shortfalls in public funding or lessening the need for public funding for Portage Path. Even the *gross* revenues, which the Decision relies upon without taking into account the negligible amounts of the occasional *net* revenues, are only about 6-10% of Portage Path's overall budget.<sup>3</sup>

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<sup>1</sup> See Supp. 93, 102, Tr.58-59, 93-94. As to provision of staffing services to hospitals and others, see Supp. 17, S.T. 173, listing sources of revenue reported on Institute's IRS Form 990 return for exempt organizations.

<sup>2</sup> See also Supp. 109, Tr. 124 (staffing services generated the cited amounts "in revenue, not in excess revenue over expense") and the relevant IRS return, Supp. 1, S.T. 157, at line 18, showing a deficit for the year in question.

<sup>3</sup> See Appx. 16, Decision at 8, referring to gross revenues from staffing of \$932,446 in 2003 and \$616,098 in 2002, and parking revenues; Financial Statements, Supp. 271, Ex. 17, showing operating budgets of \$10.453 million in 2003 and \$10.214 million in 2002. Institute revenues "support the operations of Portage Path and offset funding shortfalls," but generating profit is not the purpose of the Institute. Supp.109, 107, Tr. 121, 115.

The Board's position is akin to disqualifying a home for impoverished orphans as a charity because the orphans hold fundraising bake sales at the mall. It is like disqualifying the Girl Scouts because they sell cookies.

The Board's Decision treats a nonprofit serving a charitable purpose "without hope or expectation, if not with positive abnegation, of gain or profit" as a "commercial lessor" *because* it leases property and uses available resources for incidental fundraising. The Decision is irreconcilable with the letter and the purpose of R.C. 5709.121(A)(1)(b), the statute granting exemption to premises leased by a charity to be used for a charitable purpose. If the leasing of property on the terms revealed by the record (on a break-even or subsidized basis to the controlling charitable institution, in preference to profitable leasing) makes the Institute a "commercial lessor," then a lessor can never be a charity. *Such a rule would nullify a key provision of R.C. 5709.121.* It is also inconsistent with long-established law that collection of revenues in the course of pursuing a primary charitable purpose does not defeat the essential charitable nature of a charitable entity. *See Girl Scouts-Great Trail Council v. Levin* (2007), 113 Ohio St.3d 24, 2007-Ohio-972, 862 N.E.2d 493; *Vick v. Cleveland Memorial Medical Foundation* (1965), 2 Ohio St. 2d 30, 206 N.E.2d 2. It is absurd to disqualify the Institute as a charity because of such incidental revenues as the \$2887-3470 it collected from allowing baseball parking after hours at one of Portage Path's other facilities, or negligible net revenues from placing psychiatric staff with other agencies when their schedules allow.

The Board's Decision is unreasonable and unlawful, at odds with established law and without support in the record. This Court should modify the Decision to hold the Disputed Property (which *excludes* surplus space leased to private

parties, for which no exemption is sought), exempt from ad valorem taxation pursuant to R.C. 5709.12(B) and 5709.121.

### **STATEMENT OF FACTS**

The Institute applied for exemption from real property taxation for tax year 2003 and tax years thereafter, and for remission of taxes, penalties, and interest for tax years 2002, 2001 and 2000 for the grounds and that 68% (“Clinic Space”) of the building (“Building”) located at 792 Graham Road, Cuyahoga Falls, Ohio<sup>4</sup> which it owns and maintains for the benefit of an affiliated nonprofit entity, Portage Path Behavioral Health, a public mental health provider for Summit County. (Supp. 19-76, S.T. 235-91.)

#### ***The charitable mission and service of Portage Path***

Mentally ill and chemically addicted citizens are both in need of special care for themselves, and pose a public concern because they can be dangerous to themselves or others. (Supp. 82, 94, Tr. 16, 64.) Citizens of Ohio deemed insane were once housed for life in asylums, which eventually were replaced with state psychiatric hospitals. (Supp. 82, Tr. 14-16.) ) Chapter 340 of the Ohio Revised Code<sup>5</sup> replaced that system by creating Alcohol, Drug Addiction and Mental Health (“ADAMH”) Boards to provide community-based mental health care. (Supp. 82-83, Tr. 16-17.) Treatment of the mentally ill in the community saves the cost of up to \$180,000 per person per year, the rate that now prevails for psychiatric hospital treatment. (Supp. 82, Tr. 15-16.)

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<sup>4</sup> Tax parcels Nos. 0217808, 0215708, 0206041, 0206040 and 0206039 (Supp. 19, S.T. 235.) The entire land and Building are sometimes called the “Property” for purposes of this brief, while the “Disputed Property” is the Property exclusive of the portions leased to private parties.

<sup>5</sup> See R.C. Ch. 340; Supp. 82, Tr. 16.

ADAMH Boards, unlike other state agencies, *provide no direct services*.

(Supp. 83, Tr. 17.) They contract with providers, generally nonprofits exempt from federal taxes under Section 501(c)(3) of the tax code. (Supp. 83, Tr. 19.) These providers *cannot refuse service to anyone because of inability to pay*. (Supp. 83, 92, Tr. 19; 54-56; *See also* Supp. 157-249, Ex. 7, Service Provider Contract between Summit County ADAMH Board and Portage Path, § 3.2.2 and § 9.1.2; Supp. 250-52, Ex. 8, Assurance Statement at ¶ 16.) They provide services to patients whom private physicians are often unwilling to accept. (Supp. 83, 88, Tr. 17-20, 37.)

Portage Path provides mental health services to the residents of Summit County who otherwise would not be able to afford them, as an ADAMH Board contractor for Summit County, Ohio. (Supp. 83, 93, Tr. 20, 59.) Twenty-four hours a day, 7 days a week, it provides a suicide prevention hotline without charge, and emergency psychiatric services. (Supp. 93-96, Tr. 59-69) Many times each day, it takes in people removed from the community by law enforcement due to misbehavior arising from mental or chemical addiction problems. (Supp. 94, Tr. 63.) It provides outpatient psychological and psychiatric services. (Supp. 93, Tr. 59.) None of its patients are able to pay the cost of their care from their own income. (Supp. 93, Tr. 60.) There is no question that Portage Path is a charity. (Appx. 15, Decision at 7.)

***The Institute's mission and operation under Portage Path's control***

The Institute is wholly under the direction and control of Portage Path. (Supp. 105, Tr. 106.) It was founded by Portage Path and is set up as a nonprofit that will always be controlled by Portage Path, because the majority of its board must be members of the board of Portage Path. (Supp. 89, 91, 146-47, 153, Tr. 41, 51; Ex. 3, at Art. III; Ex.

4.) All of the Institute's governing trustees are in fact trustees of Portage Path. (Supp. 91, 154-56, Tr. 51-52, Exs. 5-6.) Both nonprofit entities have the same President. (Supp. 88, Tr. 40.) Institute employees may not serve on its Board of Trustees. (Supp. 92, 146-47, Tr. 54; Ex. 3, Art. III.) The Institute's stated purpose is "the promotion of mental health care." (Supp. 140, Ex. 2, Art. 3rd.) The Board's Decision says "The board similarly finds Northeast's [the Institute's] *purpose to support mental health services in the Summit County area* to be an admirable undertaking." (Appx. 17, Decision at 9, emphasis added.) It thus recognizes that support of mental health care is, in fact, the purpose of the Institute. The Institute operates to "reduce Portage Path's expenses in any way possible." (Supp. 93, Tr. 58-59.)

There is no question that the Institute was set up and is operated as a federally tax-exempt, nonprofit entity.<sup>6</sup> The Institute leases the Clinic Space to Portage Path at or below cost. (Supp. 93, 95, 263-68, Tr. 57, 66, Ex. 15.) Holding the property in the name of the Institute and leasing it to Portage Path helps to insulate the provision of mental health care services from fluctuations in public funding, and to document the cost of providing care for reimbursement from public agencies. (Supp. 107, 108, Tr. 116, 118-20.) The Institute *reduces Portage Path's rent* by any amount which would otherwise exceed its pro rata share of the cost of operating the property. (Supp. 97-98, 109, 263-68, Tr. 74-77, 122; Ex. 15.) If costs exceed the stated rent, then Portage Path

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<sup>6</sup> Supp. 91, Tr. 49-50; Supp. 52-53, S.T. 267-68; Supp. 140-41, Ex. 2, Articles of Incorporation; Appx. 15 Decision at 7.

gets the space *below cost*. (Supp. 97, 263-68, Tr. 74, Ex. 15.) Such an arrangement is not available from commercial leasing companies. (Supp. 98, Tr. 77.) The Institute, because it *is* a charitable entity, would not replace Portage Path with a better-paying tenant if one were available, as a commercial leasing company would do. (Supp. 98, Tr. 78.) By leasing to Portage Path at cost, the Institute saves charitable funds from going toward the profit margin or rate hikes of a commercial lessor.

The Institute incidentally pursues its charitable purpose of promoting mental health care by leasing the property that Portage Path does not need (and for which exemption is *not* sought) to others, and by providing psychiatric staffing services that support Portage Path, rather than any private party. (Supp. 93, 98, 102, 108-109, Tr. 58-59, 79, 94, 120-21.) Psychiatric staffing services are not conducted from the property at issue. (Supp. 102, Tr. 94.) Exemption is not sought for any property leased to for-profits, or used in the staffing service activities.

## ARGUMENT

### PROPOSITION OF LAW NO. 1:

**Property that is leased to a nonprofit public mental health provider by a nonprofit mental health entity wholly under its control, at or below cost, to offer public mental health services without regard to ability to pay, is property belonging to a charitable institution used for charitable or public purposes and is entitled to exemption under R.C. 5709.12 and 5709.121(A)(1)(b).**

The property at issue is used for the charitable purpose of providing mental health care without regard to ability to pay. This is the charitable purpose of both Portage Path and the Institute. The Clinic Space, and the parking lot and grounds maintained primarily for use in conjunction with it, qualify for exemption under the applicable statutes, as interpreted by this Court. The argument that exemption should be

denied on the theory that the staffing services benefit the paying recipients or staffers is like saying that Girl Scout cookies benefit those who eat them, or the Girl Scouts administrative staff.<sup>7</sup> An inventive argument, but neither the incidental sale of cookies to raise funds, nor the employment of staff, define the mission of the Girl Scouts organization. Likewise, the Institute must be evaluated on the basis of its actual charitable mission and its operation without a view to profit.

**A. Portage Path and the Institute under its control are charitable institutions using the portion of the property for which exemption is sought for exempt purposes.**

R.C. 5709.12 provides tax exemption to “real and personal property used exclusively for charitable purposes.” This Court in *Planned Parenthood Ass’n v. Tax Comm’r* (1966), 5 Ohio St. 2d 117, 214 N.E.2d 222, syllabus ¶ 1, defined “charity” as follows:

“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.

Both the Institute and Portage Path support the charitable mission of providing public mental health services without regard to ability to pay. Their work fits the Supreme Court definition of “charity” in multiple ways. The Board has already recognized that Portage Path is a charity. (Appx. 15, Decision at 7.)

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<sup>7</sup> See Appx. 17, Decision at 9. (“Providing psychiatric staffing services benefits the psychiatrists being placed and the institutions hiring the psychiatrists.”)

1. **The Institute is a charitable institution because it serves charitable purposes without a view to profit.**

The Institute is, like Portage Path, organized as a nonprofit entity, and classified as a tax-exempt charity by the federal government. (Supp. 91, 140, 52-53, Tr. 49-50; Ex. 2, Articles of Incorporation at Art. 3rd; S.T. 267-68.) Its constitutional documents prevent any earnings from being used to benefit members, trustees, officers or other private persons. (Supp. 91, 140, Tr. 50, Ex. 2 at Art. 4th.) Any surplus existing at the time of its dissolution is to be distributed by the courts to support its charitable purpose. (Supp. 91, 141, Tr. 50, Ex. 2 at Art. 5th.) Its constitutional purpose is “the promotion of mental health care.” (Supp. 140, Ex. 2, Art. 3rd.)

The Institute was founded by Portage Path and is set up so that it will always be controlled by Portage Path, since the majority of its board must be members of the board of Portage Path. (Supp. 89, 91, 146-47, Tr. 41, 51, Ex. 3, at Art. III.) In practice, all of the Institute’s trustees are trustees of Portage Path. (Supp. 91, 154-56, Tr. 52, Exs. 5 and 6, trustee lists.) Its employees may not serve as trustees. (Supp. 92, 147, 153, Tr. 54, Ex. 3, Art. III; Ex. 4.) Its mission is to support Portage Path. (Supp. 93, Tr. 59.)

At the Disputed Property, the Institute carries out its purpose by leasing Clinic Space to Portage Path at or below cost. (Supp. 93, Tr. 57.) It uses proceeds from the lease of space that Portage Path does not need to offset Portage Path’s lease. (Supp. 93, Tr. 58.) It attempts to “reduce Portage Path’s expenses in any way possible.” (Supp. 93, Tr. 58-59.) If Portage Path’s pro rata share of the cost of maintaining the Property exceeds the lease amount allocated to Portage Path, Portage Path’s expense is capped by the amount payable under its lease, and the Institute absorbs any excess of operating costs

over rent received. (Supp. 97, Tr. 74.) Thus, when costs do run high, the Institute leases to Portage Path *below cost*. If Portage Path's share of operating costs is less, the Institute *discounts the rent charged to Portage Path, reducing it to the actual cost*. (Supp. 97-98, Tr. 74-77.) *Because the Institute's mission is to support Portage Path, and not to profit*, it would not accept a better-paying tenant in its place. (Supp. 98, Tr. 77-78.) These are *not* the practices of any commercial leasing company, and *prove that the Institute operates "without hope or expectation, if not with positive abnegation, of gain or profit."*<sup>8</sup>

The Institute exists to promote mental health, not to sell services to those who do. It does so in a manner inconsistent with collecting any profit for itself or any other private party. It is a charity in its own right. *OCLC Online Computer Library Center v. Kinney* (1984), 11 Ohio St.3d 198, 11 OBR 509, 464 N.E.2d 572, upon which the Board relies, held that an applicant could not claim an exemption vicariously. *OCLC Computer Library Center* concerned an entity that merely engaged in selling its services to charitable organizations. It is not on point here.<sup>9</sup>

2. **The Institute's collection of revenues does not deprive it of its character as a charitable institution.**

The Institute is a charity because it exists for the same reason as Portage Path, which is to provide mental health care to the public without regard to ability to pay.<sup>10</sup> Carrying out its charitable mission, the Institute provides space for Portage Path

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<sup>8</sup> *Planned Parenthood*, syllabus paragraph 1, emphasis added.

<sup>9</sup> Moreover, the General Assembly clarified its intent to exempt entities like OCLC by legislatively overruling the decision the following year in R.C. 5709.72.

<sup>10</sup> Supp. 92-93, Tr. 56-60.

under a capped rent and charges less than the stated rent whenever possible.<sup>11</sup> The Institute's charitable use of the Disputed Property is integrally related to its reason for existence. See *Community Health Professionals v. Levin* (2007), 113 Ohio St.3d 432, 2007-Ohio-2336 at ¶ 21; *Girl Scouts-Great Trail Council v. Levin* (2007), 113 Ohio St.3d 24, 862 N.E.2d 493, 2007-Ohio-972 at ¶¶17-18.

The facts presented here are indistinguishable in any material respect from the facts in *Community Health Professionals*. In *Community Health Professionals*, related entities provided health care services to the elderly, some eligible for Medicare, Medicaid or private insurance reimbursement. *Id.* at ¶¶ 2-7. In this case, the related entities are devoted to the care of the mentally ill and substance-addicted. Services are provided without regard to ability to pay, although community Medicaid and local tax levies provide some reimbursements. There, as here, there was no question that the original and controlling entity is a charity. *Id.* at ¶ 5; Appx. 15, Decision at 7. This Court held that the payment of rent from one to another did not prevent the allowance of an exemption.

The evidence in the record here demonstrates that the three *corporations share a common origin, that they have overlapping resources, services, and purposes*, that they provide services *without regard to a patient's ability to pay*, and that no patients have been denied services due to their inability to pay. Based on the totality of the evidence before the BTA, we conclude that it reasonably and lawfully determined that "the subject property is indeed being used in furtherance of a charitable purpose." BTA No. 2004-K-689, at 16. ***Nor does the fact that VNA Private Duty pays a rent commensurate with the costs of utilities and depreciation undermine this conclusion in light of the relationship between the three entities.*** As we stated in *Bowers v. Akron City Hosp.* (1968), 16 Ohio St.2d 94, 96, 45 O.O.2d 445, 243 N.E.2d 95, "It is the use of property rather than the fact that revenues are collected and received from property which is controlling," citing *Vick v. Cleveland Mem. Med. Found.*, 2 Ohio

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<sup>11</sup> Supp. 97-98, 109, 263-68, Tr. 74-77, 122; Ex. 15.

St.2d 30, 31 O.O.2d 16, 206 N.E.2d 2. In addition, *the evidence in the record does not support the conclusion that CHP, VNA, or Private Duty uses the property with a view to profit.*

*Community Health Professionals*, at ¶ 23 (emphasis added).

In *Community Health Professionals*, the Board correctly held that the property leased by one nonprofit to another, to carry out the common overall purposes of both, was exempt, overruling the Tax Commissioner. On appeal to this Court, the Tax Commissioner argued “that R.C. 5709.121 does not permit a provider’s property to be exempt from real estate tax unless that provider offers services at its own expense or on a sliding scale . . . .”<sup>12</sup> In other words, it offered the same circular logic that both the Tax Commissioner and the Board followed in this case: that the Institute cannot have the exemption *created* by statute *for the purpose of* covering charitable lease-back situations, *because of* the lease itself. This Court was not persuaded by the argument in *Community Health Professionals*, and should reject it here.

The Board attempts to reconcile its Decision below with *Community Health Professionals*.<sup>13</sup> by noting that, the Tax Commissioner there determined that the original organization was a charitable institution, while here the Tax Commissioner held the Institute is not a charity *because* it leases the disputed property. This merely perpetuates the original error of circular reasoning and inconsistency with the purpose of the statute. This error was corrected by both the Board and this Court in *Community Health Professionals*, and should be corrected by this Court in this case.

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<sup>12</sup> *Community Health Professionals* at ¶ 10.

<sup>13</sup> See Appx. 17, Decision at 9, fn. 2.

The reduction of the rental charge to whatever will suffice to cover costs is “positive abnegation of gain or profit,” and the purpose of the Institute’s doing so with respect to the Clinic Space is to assist in providing psychiatric services to the residents of Summit County who otherwise could not afford them. *See also Galvin v. Masonic Toledo Trust* (1973), 34 Ohio St.2d 157, 296 N.E.2d 542 (nonprofit organization leased auditorium and meeting hall to the applicant for exemption, which in turn rented it to various civic, charitable, educational and private institutions and persons; exemption was granted on the basis that it was not operating the facility for profit, and any excess of income over expenses is and will be used for maintenance and improvement of the facility.)

Under *Girl Scouts-Great Trail Council* and a long line of Supreme Court precedent including *Bowers*, *Vick*, and *Good Samaritan Hospital v. Porterfield* (1972), 29 Ohio St. 2d 25, 29; 278 N.E.2d 26, 29, the mere fact that the Institute generates revenues does not defeat its claim for exemption. *Id.*, 2007-Ohio-972 at ¶ 17. The Board unreasonably and unlawfully fails to follow these precedents in the Decision, and should be reversed.

**B. The use of the property for which exemption is sought fits criteria for exemption.**

The Clinic Space, parking lot and grounds are entitled to exemption as property used for a charitable or public purpose under the law. They are used primarily for the charitable purpose of the Institute, which supports the public purposes of providing community mental health and public safety. Well-established precedent holds that the phrase “used exclusively for charitable purposes” in R.C. 5709.12 is equivalent to “primary use.”

*Girl Scouts-Great Trail Council*, 2007-Ohio-972 at ¶ 19; *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St. 3d 117, 120-21; 2001-Ohio-295, 742 N.E.2d 638.

Since the Institute has requested split listing (Supp. 20, 23, S.T. 236, 239), the only part of the Building for which exemption is sought is the 68% that is used as Clinic Space by Portage Path. The Clinic Space is used exclusively for the charitable purpose of providing public mental health service, without regard to ability to pay. (See Supp. 93, 95, Tr. 57, 66.) The parking lot is used primarily by Portage Path staff and patients (See Supp. 96, Tr. 72), and the surrounding green space is therapeutic for the patients visiting the clinic and serves as a lunch and break area for Portage Path staff. (Supp. 104, 109, Tr. 102, 121-22.)

The parking lot and the land are thus used primarily for the charitable purpose. Since the term, “used exclusively” is defined by the Supreme Court to mean “primary use,” the Clinic Space, parking lot and land are “used exclusively for charitable purposes.”<sup>14</sup>

Revised Code 5709.121(A)(1)(b) provides in pertinent part that:

(A) Real property \*\*\* belonging to a charitable \*\*\* institution \*\*\* ***shall be considered as used exclusively for charitable \*\*\* purposes*** by such institution \*\*\* if it meets one of the following requirements:

(1) It is used by such institution, \*\*\* or by one or more other such institutions, \*\*\* ***under a lease***, sublease, or other contractual arrangement:

(b) For \*\*\* ***charitable***, educational or ***public*** purposes[.]

(emphasis added).

The Clinic Space, parking lot and land are “used by such institution, \*\*\* or by one or more other such institutions, \*\*\* under a lease, sublease, or other contractual

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<sup>14</sup> *Girl Scouts-Great Trail Council*, 2007-Ohio-972 at ¶ 19.

arrangement \*\*\* [f]or \*\*\* charitable, educational or public purposes,” thus falling within the exemption allowed by R.C. 5709.121(A)(1)(b). The Clinic Space and surrounding land are fully entitled to exemption on these grounds. Accordingly, the requested exemption should be granted under R.C. 5709.12 and 5709.121(A)(1)(b).

C. **The use of the Disputed Property is for the charitable purpose of Portage Path and the Institute, not incidental fundraising activities.**

The position of the Tax Commissioner that the Institute is not a charity because of incidental fundraising activities, including the leasing of space currently unneeded by Portage Path and any other staffing or leasing activities, turns the line of precedent dealing with revenue-raising incidental activities of charities on its head. The Disputed Property for which exemption is sought *excludes* those portions of the Property leased to private parties. There are a number of cases in which exemption was denied *to the property used for fundraising activities*, on the basis that property used to generate money for charitable activities elsewhere is not exempt. Mindful of these cases, the Institute here seeks exemption only of the property used in furtherance of its charitable purpose.

Examples of non-exempt fundraising properties of charitable entities include the print shop in *Hubbard Press v. Tracy* (1993), 67 Ohio St.3d 564, 621 N.E.2d 396, a division of the Presbyterian Church. The shop was denied exemption, but exemption was not taken away from the church. In *Zindorf v. Otterbein Press* (1941), 138 Ohio St. 287, 34 N.E.2d 748, a print shop run by an organ of the United Brethren Church, and in *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 359, 131 N.E.2d 219, a book shop operated by the Lutheran Welfare Service, were not themselves exempt. However, there was no claim that their activities disqualified the sponsoring charities as

charitable institutions. A shop raising money for the school in *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186, 503 N.E.2d 163 did not qualify for exemption, but the case in no way suggests that its activities disqualified the school as a charitable institution.

These are cases where a single property of an otherwise charitable entity was not exempted, because *that property* was used solely to raise money for charitable activities conducted elsewhere. While property used for fundraising may not be exempt, even though proceeds go to charity, an entity whose mission is to give its net revenues to charity *is* a charity. *Akron Golf Charities v. Limbach* (1987), 34 Ohio St.3d 11, 14-15; 516 N.E.2d 222, 225-26. Its property leased to another charity to carry out the charitable purpose is entitled to exemption. The line of cases that runs from *Otterbein Press* to *Hubbard Press* in no way supports the result here, which disqualifies the entire charitable enterprise as a charity because of the incidental fundraising.

Here, as in *Akron Golf Charities*, the ruling of the BTA “is erroneous as a matter of law in that it ignores the fundamental purpose of Charities [the applicant].” *Id.*, 34 Ohio St.3d at 13. The issue of the nature of the applicant entity must be decided based on its fundamental purpose. In *Akron Golf Charities*, this Court held:

the focus of the exemption granted by the legislature is always unequivocally placed on the *purpose and actual operation of the corporation that desires the exemption*. Charities' purpose is one that is restricted by its articles of incorporation, its code of regulations, and its federal tax exemption in part to serving the charitable needs of the Akron community. Charities is committed to raising money for Akron charities, which in turn render help and assistance to those in need or serve the educational needs of the greater Akron area.

Id., 34 Ohio St.3d at 13 (emphasis added).<sup>15</sup>

Likewise here, the Institute’s “purpose is one that is restricted by its articles of incorporation, its code of regulations, and its federal tax exemption” to serving the charitable purpose of promoting mental health, without a view to profit. There is no evidence whatsoever that the Institute is created or run to achieve any commercial or profit-making purpose. The evidence is unequivocal that its purpose is to promote mental health in general, and the provision of mental health services by Portage Path to those unable to pay for them in particular, on a not-for-profit basis.

**PROPOSITION OF LAW NO. 2:**

**Property that is leased by a nonprofit institution whose purpose is to promote mental health, to a nonprofit public mental health clinic to offer public mental health services without regard to ability to pay, under contract with an agency of the state, is property “belonging to a charitable institution” and “made available under the direction or control of such institution, the state or political subdivision for use in furtherance of or incidental to its charitable or public purposes and not with the view to profit” and is entitled to exemption under R.C. 5709.12 and 5709.121(A)(2).**

**A. The Property at issue is under direction or control of a charitable institution.**

Where property is owned by a charitable institution, R.C. 5709.121 also broadens the definition of “charitable purposes” to include uses “in furtherance of or incidental to its charitable \*\*\* or public purposes.” The statute provides in pertinent part:

(A) Real property \*\*\* belonging to a charitable \*\*\* institution \*\*\* shall be considered as used exclusively for charitable \*\*\*

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<sup>15</sup> Although *Akron Golf Charities* dealt with an application for exemption from sales and use tax, it has also been cited in cases addressing the charitable nature of entities applying for real property tax exemption. See, e.g., *Ohio Seed Improvement Association, v. Tracy* (October 22, 1993), BTA Case No. 91-M-1330, 1993 WL 438662 at \*4.

purposes by such institution, the state or political subdivision, if it meets one of the following requirements:

(2) It is made available under the direction or control of such institution, the state, or political subdivision for use in furtherance of or incidental to its charitable \*\*\* or public purposes and not with the view to profit.

In *Cincinnati Nature Center v. Bd. of Tax Appeals*, (1976), 48 Ohio St. 2d 122, 357 N.E.2d 381, the Supreme Court announced a three-part test for deciding whether a property meets these requirements:

To fall within the terms of R.C. 5709.121, property must (1) be under the direction or control of a charitable institution \*\*\*, (2) be otherwise made available “for use and furtherance of, or incidental to” the institution’s “charitable \*\*\* or public purposes” and (3) not be made available with a view to profit.

48 Ohio St. at 122.

The property at issue here is the Clinic Space and surrounding land. The Institute is itself a charitable institution, as the record demonstrates. (Supp. 93, 97-98, Tr. 57-59, 74-78.) Moreover, because of the structure of Portage Path and the Institute, including Portage Path’s formation of the Institute in a manner that assures Portage Path’s complete control of the Institute,<sup>16</sup> it is equally true to state that this property is “under the direction or control” of Portage Path. The Clinic Space, parking areas primarily for clinic staff and patient parking, and surrounding therapeutic green space are thus “under the direction or control of a charitable institution,” consistent with the *Cincinnati Nature Center* definition, under either approach.

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<sup>16</sup> The Institute was created by the Portage Path Board of Trustees (Supp. 89, Tr. 41) and the Institute’s organizational documents require that the majority of its board must be members of the board of Portage Path (Supp. 91, 140, Tr. 51, Ex. 3, at Art. III.) All of the Institute’s trustees are in fact trustees of Portage Path. (Supp. 91, 154-56, Tr. 52, Exs. 5 and 6, trustee lists.)

**B. The property at issue is made available for use in furtherance of or incidental to the institution's charitable or public purposes.**

The Institute is both a charity in its own right, and is completely under the control of Portage Path. It makes the Clinic Space and grounds available to Portage Path in furtherance of their mutual purpose of promoting public mental health, which is both a charitable purpose and a public purpose. The Institute is thus fulfilling the second factor considered in the legal test, in that it makes the Clinic Space and grounds “available ‘for use in furtherance of, or incidental to the institution’s charitable \*\*\* or public purposes’”<sup>17</sup> See *Grandview Hosp. v. Zaino* (Montgomery Cty. 2002), 2002 WL 1393884, 2002 -Ohio- 3292 (property used by hospital to house on-call doctors was used in furtherance of and incidental to the charitable purpose of the hospital).

The charitable character of Portage Path is unquestioned. The record further demonstrates that it is and was at all relevant times operating as dictated by its contract with the Summit County ADAMH Board to provide public mental health services without regard to ability to pay. (Supp. 82-83, 92, 157-252, Tr. 16-17, 20, 54-56, Exs. 7, 8.) These ADAMH Board contracts are the means by which the State of Ohio carries out the mandate of Chapter 340 of the Revised Code to provide public mental health services. (R.C. Ch. 340; Supp. 82, Tr. 16.) The ADAMH boards established by the state do not provide any direct service—all direct service is supplied by contractors, like Portage Path, which actually carry out this public function of assisting the mentally ill, and preserving public safety by doing so. (Supp. 82-83, 93, 94, Tr. 16-17, 59, 63.) By leasing the property in question to Portage Path, the Institute thus makes it available for a charitable purpose which is also a public purpose.

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<sup>17</sup> *Cincinnati Nature Center*, 48 Ohio St. at 122, quoting R.C. 5709.121(A)(2).

Before the advent of community mental health programs like that supported by the Institute and carried out by Portage Path under R.C. Ch. 340, the mentally ill were housed in asylums, often for life. (Supp. 82, Tr.14-16.) Psychiatric hospitalization costs today run approximately \$180,000 per year per person. (Supp. 82, Tr. 16.) Clearly, there is a public benefit conferred by Portage Path which maintains many mentally ill persons in outpatient rather than hospital treatment programs and thus lowers public cost. The Institute likewise confers a public benefit by leasing the Clinic Space to Portage Path on a non-commercial basis, thus even further saving public resources. (Supp. 97-98, Tr. 74-78.) Collecting property tax from the Institute for the Clinic Space and grounds, on the other hand, simply raises the cost of public mental health care, and wastes the costs necessary to collect and administer such taxes in the process.

**PROPOSITION OF LAW NO. 3:**

**A nonprofit entity that is restricted by its articles of incorporation to serve purposes defined by Ohio law as charitable or public purposes, and determined by the Internal Revenue Service to qualify for federal tax exemption under Section 501(c)(3), Title 26, U.S. Code is presumably a charitable institution for purposes of R.C. 5709.121, in the absence of evidence that it has violated the requirements of its articles or of Section 501(c)(3).**

**A. The Court should resolve confusion about eligibility of Section 501(c)(3) organizations for Ohio tax exemptions.**

Logically, exemption under Section 501(c)(3) of the Internal Revenue Code indicates entitlement to an Ohio exemption, so long as the exempt entity is operating consistently with a charitable purpose that qualifies under Ohio law. A Section 501(c)(3) entity, whose articles or other charter documents state a purpose that meets the *Planned Parenthood* criteria, and that operates accordingly, should be legally

presumed to be a charitable institution for purposes of R.C. 5709.121. Such a presumption would clarify the law, promote judicial economy, and provide greater certainty for charities throughout Ohio. The question of non-charitable use of specific property would remain a separate issue.

**B. Courts have generally found entities compliant with federal tax exemption criteria to be charities under Ohio law.**

In *Akron Golf Charities*, this Court linked operations consistent with the articles of incorporation of a federally tax-exempt entity with approval of an Ohio exemption, reversing the Court of Appeals and Board decisions below. It held that the applicant was a charity, notwithstanding “many of the characteristics of a profit-making business” in its operation of charity golf tournaments. *Id.*, 34 Ohio St.3d at 13; 516 N.E.2d at 224. It held that “*the focus of the exemption* granted by the legislature is always unequivocally placed on the *purpose and actual operation* of the corporation that desires the exemption.” *Id.*, 516 N.E.2d at 224-25 (emphasis added). Exemption is warranted where the “purpose is one that is restricted by its articles of incorporation, its code of regulations, *and its federal tax exemption* in part to serving the charitable needs . . .” *Id.* (emphasis added). This Court concluded:

Appellee [Tax Commissioner] *does not argue that Charities has violated its articles of incorporation*. Indeed, the BTA lauded the activities of Charities. To suggest that Charities has the status of a “business” solely because it staged a major golf tournament simply ignores the fact that the golf tournament is *nothing more than a means to a charitable end*.

*Id.* (emphasis added).

Likewise, to suggest that the Institute is a “business” solely because it collects negligible rents or other revenues, dedicating all to the nonprofit provision of mental health care, simply ignores that all its activities are means to its charitable end. It

confuses incidental activities, not conducted on the premises for which exemption is sought, with the central purpose and primary operations of the applicant.

Five other court decisions recognize the charitable character of entities holding Section 501(c)(3) exemptions, with the issue of exemption turning on use of the property. *Miracit Dev. Corp. v. Zaino* (Mar. 10, 2005), Franklin Cty. No. 04AP-322, 2005-Ohio-1021, 2005 WL 564073 reversed the Board to recognize the charitable nature of an economic revitalization/family assistance organization running a day care center, and exempt the day care premises.

*Community Health Professionals* (hospice, nursing and adult day care organization) and *Bethesda Healthcare, Inc. v. Wilkins* (2004), 101 Ohio St.3d 420, 2004-Ohio-1749, 806 N.E.2d 142 (hospital-sponsored fitness and rehabilitation facility) concerned Section 501(c)(3) organizations whose charitable character was not put in question, although charitable use of the property was questioned. In *Bethesda*, the result was a split-listing granting exemption to part of the premises, but denying it to the portion used similarly to a private fitness club.

In *Community Health Professionals*, this Court upheld a Board ruling exempting premises leased between related Section 501(c)(3) organizations. The Court and the Board, reversing the Tax Commissioner, agreed in that case that the lease of premises, at cost, from one nonprofit organization to related nonprofits that provided adult day care, nursing and hospice services, was a charitable use of the property. Constrained by this Court's decision, the Board also granted exemption in *Private Duty Services v. Zaino*, (Aug. 31, 2007), BTA Case No. 2004-B-688, 2007 WL 2688698, which concerned related entities and similar services. The entities involved in these two

cases are engaged in the exact same activity at their premises that the Institute engages in at the Disputed Property—leasing to a related nonprofit. It is inconsistent with these decisions to characterize the Institute as a commercial lessor because it leases to a related charity.

*Herb Society v. Tracy* (1994), 71 Ohio St.3d 374, 643 N.E.2d 1132 exempted the premises of a nonprofit society formed to study herbs and educate the public about them. It reversed BTA Case No. 91-A-1761 (Nov. 5, 1993), 1993 WL 463975. *Case Western Res. Univ. v. Tracy* (1999), 84 Ohio St.3d 316, 703 N.E.2d 1240 agreed with the Board that state-supported emerging technology and economic development entities were charitable. However, premises leased to for-profit ventures were not exempt.

In one case, a German-American cultural society was denied exemption although it did have a Section 501(c)(3) exemption. *Olmsted Falls Bd. of Educ. v. Tracy* (1997), 77 Ohio St.3d 393, 674 N.E.2d 690. The *Olmsted Falls* result is consistent with a difference between the federal exemption available to social and fraternal organizations, but not to Ohio nonprofits in this category, which fall outside of the *Planned Parenthood* test.

C. **There is no evidence that the Institute has any purpose other than the charitable purpose of promoting mental health care without a view to profit, and the Board's findings are internally inconsistent.**

The Institute's charter, its federal tax exemption and, as a practical matter, the control that Portage Path exercises over it, dictate that it serves its purpose to promote public mental health without seeking to profit.<sup>18</sup> In the arguments of the Tax Commissioner, and in the rulings below, there are completely unsupported statements that the Institute's purpose or basis for creation was to provide psychiatric staffing services or commercial leasing. The placement of psychiatric staff with available hours, like the leasing of space that Portage Path does not presently need, is not a "purpose," but rather an incidental and impermanent function that the Institute performs to support Portage Path.<sup>19</sup> The record is replete with evidence of the Institute's purpose, which is to promote mental health without seeking any profit. (Supp. 89, 90-91, 93, 108-109, Tr. 41, 45-51, 58-59, 120-21.)

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<sup>18</sup> Specifically, its articles provide:

Third: This corporation is organized and shall be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of any organization described in Sections 501(c)(3) and Sections 509(a)(1) or (2) of the Internal Revenue Code, as it now exists or is hereinafter amended (the "Code"), which is located in Northeast Ohio and has as its primary purpose the promotion of mental health care; provided that this corporation at all times shall be operated exclusively for charitable, educational or scientific purposes within the meaning of Section 501(c)(3) of the Code.

Fourth: No part of the next earnings of this corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that this corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Third hereof.

(Supp. 140, Ex. 2.)

<sup>19</sup> Mr. Kraker testified that there was no staffing service at one time, that it was "one of the functions" that "we do now." Supp. 102, Tr. 93-94.

The Board's Decision contradicts itself in this regard. It makes the unsupported assertion that the Institute "was also created" to provide staffing to others.<sup>20</sup> This alleged "purpose" is not supported by the Institute's articles, its federal tax exemption, or the testimony. In the same Decision, the Board says "The board similarly finds Northeast's [the Institute's] *purpose to support mental health services* in the Summit County area to be an admirable undertaking." (Appx. 17, Decision at 9, emphasis added.) The purpose to support public mental health is the one that the record supports. (Supp. 89, 90-91, 93, 108-109, 140-44, Tr. 41, 45-51, 58-59, 120-21; Ex. 2.) The conclusion that the Institute is not a charitable institution, and that the Disputed Property that it leases to Portage Path is therefore not entitled to exemption, has no reliable nor probative support in the record, and should therefore be reversed as unreasonable and unlawful. See *Girl Scouts-Great Trail Council*, 2007-Ohio-972 at ¶ 9. The record shows that this Section 501(c)(3) organization is carrying out its charitable purpose without a view to profit, and Ohio law will benefit from a clearcut statement that it is a charitable institution.

**D. A presumption linked to Section 501(c)(3) status would clarify contradictory precedent from the Board of Tax Appeals.**

While court precedents in cases concerned with Section 501(c)(3) organizations offer consistency, those of the Board are confusing. The relevant facts in

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<sup>20</sup> Decision at 4. The record citation reveals only testimony about a reference from the Guidestar website, under the heading "Programs," which first mentions providing facilities for Portage Path to carry out its exempt purpose, and secondarily mentions staffing. Mr. Kraker said only that this brief "program" description "accurately reflects what we're currently doing," not that it states any *purpose* of the Institute that is different from that stated in its Articles and federal exemption, and the goals of its controlling entity Portage Path.

this case are indistinguishable from those in *Community Health Professionals* and *Private Duty Services*, yet in this case the Board unreasonably and unlawfully denied exemption to the Institute. Other Board rulings concerning Section 501(c)(3) organizations are likewise irreconcilable.<sup>21</sup>

This Court reversed the Board's misconstruction of the charitable character of the applicant in the *Herb Society* case. The General Assembly has legislatively reversed two more of the Board's rulings against federally exempt entities, *Rehab Project v. Tracy* (May 23, 1997), BTA Case No. 95-R-418, 1997 WL 1909686 and *Columbus Bd. of Educ'n v. Limbach and American Chemical Society* (June 26, 1992), BTA Case No. 86-H-566, 1992 WL 153126. The General Assembly's response to these two decisions indicates that the Board interpretation is not consistent with "the focus of the exemption granted by the legislature," as required by *Akron Golf Charities*, 34 Ohio St.3d at 13; 516 N.E.2d at 224.

*Columbus Bd. of Educ'n v. Limbach and American Chemical Society* (June 26, 1992), BTA Case No. 86-H-566, 1992 WL 153126 denied exemption to a nonprofit scientific professional association involved in abstracting and disseminating the latest chemical research. In legislatively reversing the decision, the General Assembly established a "conclusive presumption" that nonprofit organizations like the American Chemical Society that were either qualified under Section 501(c)(3), or organized with a

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<sup>21</sup> For example, *Miami Valley Research Foundation v. Tracy* (June 17, 1994), BTA Case No. 91-J-161, 1994 WL 279437, denied charitable status to a university-affiliated economic development entity, although the purposes of the applicant were virtually identical with those of a similar entity qualified as an Ohio charitable institution according to rulings of both this Court and the Board. *Case Western Res. Univ. v. Tracy* (1999), 84 Ohio St.3d 316, 703 N.E.2d 1240.

specific type of federal charter for such scientific societies, are “charitable or educational institutions” under Ohio law. *See* R.C. 5709.12(D)(1). In *Rehab Project v. Tracy* (May 23, 1997), BTA Case No. 95-R-418, 1997 WL 1909686, the Board denied Ohio exemption to a federally exempt entity that assisted low income families and redeveloped deteriorated neighborhoods by rehabilitating housing without taking any profit. The General Assembly subsequently passed R.C. 5709.12(E) to grant an exemption for up to two years to property held by entities like Rehab Project, using Section 501(c)(3) status as one criterion to identify those eligible for exemption.

The intent of the General Assembly to exempt an entity, like the Institute, that facilitates the charitable work of a controlling charity, like Portage Path, has been further articulated with the recent passage of Sub.H.B. No. 160 (effective June 20, 2008). The new law amends R.C. 5701.14 to provide that a single member limited liability company operating with a nonprofit purpose shall be treated as part of the same legal entity as its nonprofit member, and “[f]ilings of applications for exemptions . . . may be made by either the single member limited liability company or its nonprofit member.” Although this provision was not available when Portage Path set up the Institute, the policy reasons for passing the new statute are the same as the policy reasons that the law should recognize the charitable character of a corporation like the Institute, and exempt the property where its controlling, charitable member carries out its charitable activities.

Further inconsistency arises from the Board’s decision in *88/96 LP v. Wilkins* (July 20, 2007), BTA Case No. 2005-A-55, 2007 WL 2156133. That decision exempts property that a for-profit limited partnership leases to its general partner, a nonprofit provider of supervised, subsidized housing to the chronically homeless. The

beneficiaries of services rendered on the exempt premises in *88/96 LP*, like the patients treated at the Institute's property used by Portage Path, suffer from mental health disabilities or chemical dependencies. *Id.*, slip op. at 4 ("They also need to have some sort of a disability, whether it's mental health and/or chemical dependency, what we sometimes call dual diagnosis.")

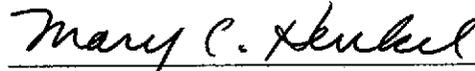
Corporate structure should not obscure charitable purpose, nor create anomalies in exemptions. As the law stands, under the *88/96 LP* decision, entities structured so that a limited partnership leases back to its general partner for a charitable use are exempt. Under Sub.H.B. No. 160, a limited liability company renting back to its sole member is exempt if the property has a charitable use. Under *Community Health Professionals* and *Private Duty Services*, related nonprofit corporations leasing space to each other are exempt. Nevertheless, a nonprofit corporation controlled by a recognized charity, in the present case, is unreasonably denied exemption.

*Akron Golf Charities* ruled that the inquiry into charitable character of an entity must focus on "the purpose and actual operations of the entity." *Id.*, 34 Ohio St.3d at 13; 516 N.E.2d at 225. Since the Institute's purpose and its operations on the Disputed Property serve the charitable purpose of mental health care for those unable to pay, a properly focused analysis shows that exemption is warranted. Substantial confusion would be resolved by a guideline from this Court that a Section 501(c)(3) organization, with a stated purpose matching the *Planned Parenthood* criteria and free of evidence of any departure from it, is a charitable institution.

**CONCLUSION**

For all of the foregoing reasons, 68% of the Building located on the tax parcels at issue, and the parking lot and surrounding grounds, should be granted exemption from real property taxation. This Court should modify the Decision and enter final judgment accordingly.

Respectfully submitted,



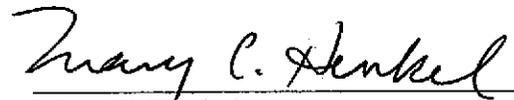
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APPENDIX

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Northeast Ohio Psychiatric Institute

Appellant,

Vs.

William W. Wilkins, Tax  
Commissioner of Ohio,

Appellee.

Appeal from the Ohio  
Board of Tax Appeals

Board of Tax Appeals  
No. 2005-Z-1683

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NOTICE OF APPEAL OF APPELLANT  
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FILED  
JAN 10 2008  
CLERK OF COURT  
SUPREME COURT OF OHIO

## NOTICE OF APPEAL

Appellant Northeast Ohio Psychiatric Institute ("the Institute") gives notice of its appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals ("Board"), journalized in Case No. 2005-M-1683 on December 14, 2007 (the "Decision"). A true copy of the Decision is attached.

### Introduction

The Decision is unreasonable and unlawful in several respects. For the sake of clarity and organization, the Institute will group its assignments of error under specific headings. Each assignment of error is independent and may be considered apart from the other assignments of error.

### Assignments of Error

#### General

- (1) The Board erred by failing to find that the property located at 792 Graham Road in the City of Cuyahoga Falls, Ohio and designated by the Summit County Auditor as permanent parcel nos. 0217808, 0215708, 0206041, 0206040 and 0206039, *exclusive of* those areas leased to private parties ("Disputed Property") is exempt from *ad valorem* taxation pursuant to R.C. §§ 5709.12 and 5709.121.
- (2) The Board erred by failing to hold that the Disputed Property (which *does not include* the space leased to private parties that is excluded from the application for exemption) is owned by an institution and used exclusively for charitable purposes pursuant to R.C. §5709.12(B).

- (3) The Board erred by failing to hold that the Disputed Property (which *does not include* the space leased to private parties that is excluded from the application for exemption) is owned by a charitable institution and used by a charitable institution under a lease for charitable purposes pursuant to R.C. §5709.121.

Errors of law regarding the Institute's charitable character

- (4) The Board erred by failing to hold that the Institute is a charitable institution.
- (5) The Board erroneously held that the Institute is not a charity, despite the undisputed evidence that it was created and is controlled by a charitable public mental health provider, Portage Path Behavioral Health ("Portage Path"), to promote public mental health.
- (6) The Board erred by looking to the activity of leasing itself as an activity that disqualifies the lessor from being a charity, despite the fact that leasing by a charity is an activity specifically contemplated by R.C. 5709.121(A)(1).
- (7) The Board erred by failing to correctly apply R.C. 5709.121(A)(1)(b) to the Disputed Property, which "is used by a [charitable] institution, \*\*\* under a lease, sublease, or other contractual arrangement \*\*\* [f]or other charitable \*\*\* or public purposes."
- (8) The Board erred by failing to apply R.C. 5709.121(A)(2) correctly to the Disputed Property, which "is made available under the direction or control of [Portage Path, a charitable] institution,\*\*\* for use in furtherance of or incidental to its charitable \*\*\* purposes and not with the view to profit" because the Institute is wholly under the direction and control of Portage Path, which uses the Institute and the Disputed Property for charitable public mental health activities.

- (9) The Board erred by failing to recognize the Institute's mission to promote mental health as a charitable purpose.
- (10) The Board erred by ruling that the Institute is not a charity, contrary to this Court's ruling in *Akron Golf Charities* (1987), 34 Ohio St.3d 11, 14-15; 516 N.E.2d 222, 225-26, when the record demonstrates that the Institute was created and is run to contribute to the charitable public mental health work of Portage Path.
- (11) The Board erred by holding that the Institute is not a charity, despite the lack of any evidence that it is operated with a view to profit.
- (12) The Board erred by failing to hold that the Institute is a charity, despite overwhelming evidence in the record that it exists to attempt in good faith spiritually, physically, intellectually and socially to advance and benefit the mentally ill in particular, without regard to ability to pay and with positive abnegation of gain or profit, fulfilling the requirements of *Planned Parenthood Ass'n v. Tax Comm'r* (1966), 5 Ohio St. 2d 117, 214 N.E.2d 222, syllabus ¶ 1.
- (13) The Board erred by holding that the Institute is not a charity, despite overwhelming evidence in the record that it exists to attempt in good faith spiritually, physically, intellectually and socially to advance and benefit society in general, insofar as society is endangered by mentally ill and chemically dependent persons who do not receive care; and that it operates without regard to ability to pay and with positive abnegation of gain or profit, fulfilling the requirements of *Planned Parenthood Ass'n v. Tax Comm'r* (1966), 5 Ohio St. 2d 117, 214 N.E.2d 222, syllabus ¶ 1.

- (14) The Board erroneously characterized the Institute as a commercial lessor, although the record demonstrates that it is a charity, which exists to promote public mental health and provide space to and otherwise support a charitable public mental health provider, Portage Path.
- (15) The Board erroneously characterized the Institute as a commercial lessor, although the record demonstrates that it subsidizes charitable mental health care, and leases to Portage Path rather than to profitable lessees, in a manner inconsistent with commercial leasing operations.
- (16) The Board erroneously held that the Institute is not a charity, overlooking the primary purpose and activity of the Institute to support public mental health care for those unable to pay.
- (17) The Board erroneously held that the Institute is not a charity on the basis of its incidental charitable fundraising activities, not conducted on the Disputed Property, by which it generates revenues to support its charitable purpose.
- (18) The Board erred by misapplying the holdings of *Hubbard Press v. Tracy* (1993), 67 Ohio St.3d 564, 621 N.E.2d 396 and related cases to disqualify the Institute as a charity because of incidental fundraising conducted on other property, rather than restricting consideration of the effect of incidental fundraising activities to the eligibility for exemption of property used for such activities.

Errors of law regarding charitable use of the Disputed Property

- (19) The Board erroneously held that the Disputed Property (consisting *only* of that space for which exemption is sought, the space used for or incidental to operation

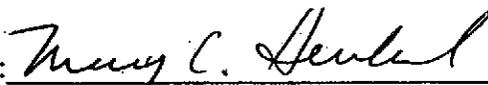
of Portage Path's public mental health clinic) is not used exclusively for charitable purposes pursuant to R.C. 5709.12(B).

- (20) The Board erred by failing to restrict consideration of the use of the Disputed Property to the Disputed Property alone, looking instead to the use of property for which exemption is not sought.
- (21) The Board erred by failing to hold that the Disputed Property is used exclusively for the charitable purposes of Portage Path, which is itself a charity, and which wholly controls the Institute.
- (22) The Board erred by failing to follow the law as established by R.C. 5709.121(A)(1)(b) and explicated by this Court in *Community Health Professionals v. Levin* (2007), 113 Ohio St.3d 432, 2007-Ohio-2336, providing that collection of rent to cover costs of charitable activities does not undermine the conclusion that property is used in furtherance of a charitable purpose.
- (23) The Board erred by failing to apply R.C. 5709.121(B)(2) to exempt the property at issue because it is made available under the direction or control of a charitable institution, the state, or political subdivision for use in furtherance of or incidental to its charitable or public purposes and not with the view to profit.
- (24) The Board erroneously held that the Institute leases property with a view to profit, where the uncontradicted record demonstrates that the Institute leases to Portage Path on a non-commercial basis, at or below cost, uses proceeds from all other activities solely to support Portage Path, uses proceeds from the lease of space that Portage Path does not need to offset Portage Path's lease, and deliberately leases to Portage Path rather than to profitable lessees.

### Conclusion

Based on each and every assignment of error set forth above, the Board's Decision is unreasonable and unlawful. Accordingly, the Court should reverse and vacate the Decision or modify the Decision and enter final judgment in accordance with such modification. If the Court reverses and vacates the Decision and remands the Decision to the Board, the Court should exercise its authority to direct the Board to convene a rehearing on the merits, applying the appropriate legal and evidentiary standards. *See Gennaro Pavers, Inc. v. Kosydar* (1974), 38 Ohio St.2d 174, 311 N.E.2d 516. Alternatively, the Court should direct the Board to reconsider the record in light of the findings of this Court, applying the appropriate legal and evidentiary standards.

Respectfully submitted,

By: 

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**PROOF OF SERVICE**

I certify that a copy of this NOTICE OF APPEAL was served via hand delivery,  
this 10<sup>th</sup> day of January, 2008 on:

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**OHIO BOARD OF TAX APPEALS**

Northeast Ohio Psychiatric Institute, )  
 )  
Appellant, ) (REAL PROPERTY EXEMPTION)  
 )  
vs. ) DECISION AND ORDER  
 )  
William W. Wilkins, )  
Tax Commissioner of Ohio, )  
 )  
Appellee. )

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Entered **DEC 14 2007**

Ms. Margulies, Mr. Eberhart, 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 December 6, 2005. This appeal is taken from a determination of the Tax Commissioner, appellee herein, wherein said official considered an application for exemption from real property taxation for tax year 2003 filed by the appellant. Through his journal entry, the commissioner

concluded that property owned by the appellant be denied exemption. The appellant has challenged the commissioner's denial.

The matter is considered by the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the Tax Commissioner, the evidence adduced at the merit hearing held before this board, and the legal argument provided by the appellant and appellee Tax Commissioner.

The appellant, Northeast Ohio Psychiatric Institute ("Northeast"), is a non-profit corporation originally formed by Portage Path Behavioral Health ("Portage Path"). Portage Path is a non-profit public mental health provider. According to its articles of incorporation, Northeast was organized with its primary purpose "the promotion of mental health care" and was to be operated exclusively for "charitable, education or scientific purposes within the meaning of Section 501(c)(3) of the [Internal Revenue] Code." Appellant's Ex. 2.

At the hearing before this board, Mr. Jerry Kraker, president of both Portage Path and Northeast, described the relationship between Portage Path and Northeast. In 2003 Portage Path contracted with the Summit County Alcohol Drug Addiction and Mental Health Services Board ("ADAMH") to provide mental health services in the Summit County area. As a result of that contract, Portage Path was required to provide an "Assurance Statement." Appellant's Ex. 8. That statement assured ADAMH that clients will be provided services regardless of ability to pay, and that moneys provided to Portage Path will be used to provide available,

accessible, quality mental health services which preserve human dignity. According to Mr. Kraker, Northeast exists to support Portage Path's mission and to fulfill the conditions of Portage Path's contract with ADAMH. H.R. at 48.

Northeast is the titleholder to certain property located on Graham Road in Cuyahoga Falls, the exemption of which is the subject of this appeal. The property is improved with a 5,000±-square-foot office building, originally constructed in 1959. The property was purchased by Northeast in 1993. A lease executed in 1998 by Portage Path as lessee and Northeast as lessor was presented to the Tax Commissioner. A lease executed in 2003 between the same parties was presented to this board and marked Appellant's Exhibit 16. Both leases provide that Portage Path controls 57 percent of the building<sup>1</sup> for a rental rate of \$5,500 per month. The leases further obligate the lessor to pay all utilities except telephone, and require Portage Path to pay a proportionate share of any increase in taxes, assessment, insurance, and utilities after the base year ending on January 31, 1994.

Despite the fact that the lease documents presented to the Tax Commissioner and this board indicated that Portage Path leased 57 percent of the premises, Mr. Kraker testified that Portage Path actually occupied 68 percent of the premises. The remainder of the subject that was not leased to Portage Path in 2003 was leased to two other entities, a medical laboratory and a private doctor's office.

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<sup>1</sup> At hearing, Mr. Kraker indicated that Portage Path currently occupies a greater percentage of the building, as one of the for-profit entities has vacated the building. However, at the time of the exemption request, two for-profit entities were situated in the subject property.

Appellant's Ex. 17. Mr. Kraker explained that Portage Path's entire rental payment was used to offset the operating costs of the building. However, if Northeast's expenses for operating the building were less than Portage Path's rent, a portion of the rent was returned. Appellant's Exhibit 17 consists of rent schedules for years ending December 2000, 2001 and 2002. Each schedule identified rental payments made by the three entities sharing the subject property. The medical laboratory was allocated 12 percent of the operating expenses, the private doctor's office, 20 percent, and Portage Path, 68 percent of the expenses. Mr. Kraker testified that after operating expenses were allocated, Portage Path received a refund for years ending December 31, 2001 and 2002, as in those years, 68 percent of operating expenses did not reach \$66,500. However, in the year ending December 31, 2000, Portage Path was not required to pay in excess of \$66,500, even though its share of operating expenses exceeded that amount. H.R. at 74-76.

Mr. Kraker also described the other activities Northeast participated in during the year for which exemption was sought. Northeast was also created to provide psychiatric staffing to other agencies in need of professionals to perform psychiatric evaluation. H.R. at 112, 113. Northeast operated employee assistance programs and operated an employment service for psychiatrists through which it deployed psychiatrists either to Portage or "other providers of psychiatric services." H.R. at 94. Northeast also operated a mental health clinic on another site and earned

income from parking fees on another piece of property which was located near the Akron Arrows Baseball Stadium. H.R. at 115, 116.

Based upon the use of the property, Northeast argues that the Tax Commissioner erred when he concluded that the property was subject to real property tax. 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 construed. *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407; *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199.

Any institution, whether charitable or noncharitable, may receive exemption for its property if that institution uses the property exclusively for

charitable purposes. However, charitable and noncharitable institutions are held to different standards when seeking exemption. When a noncharitable institution seeks exemption, the institution must use the real property "exclusively for charitable purposes." *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405.

In *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St. 3d 117, the Ohio Supreme Court interpreted the terms "exclusively for charitable purposes" as found in R.C. 5709.12. Therein the court held:

"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). In *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St. 3d 134, 135, \*\*\* this court held that for purposes of R.C. 5709.07, the phrase 'used exclusively for public worship' was equivalent to 'primary use.' There is no indication that the phrase 'used exclusively' as used in R.C. 5709.12 is to be interpreted differently than it is in R.C. 5709.07." *Id.* at 120, parallel citations omitted.

Thus, the Tax Commissioner (and, in turn, this board) must first determine whether the owner is a charitable or noncharitable institution. If the owner is a noncharitable institution, then, the Tax Commissioner (and, in turn, this board) must determine whether the property is used primarily for a charitable purpose. This determination is made without consideration of the permitted uses accorded to charitable institutions in R.C. 5709.121. *Community Health Professionals, Inc. v. Levin*, 113 Ohio St.3d 432, 2007-Ohio-2336; *Olmsted Falls Bd. of Edn. v. Tracy* (1997), 77 Ohio St. 3d 393.

In the present matter, the Tax Commissioner found that Northeast was not a charitable entity:

“[T]he record shows that the applicant Northeast is a non-charitable entity more in the nature of a business entity, providing employee staffing services to the community, and operates the property as a commercial lessor.” S.T. at 2.

Northeast has provided this board with evidence that it is a non-profit entity. However, for purposes of real estate tax exemption, a corporation must be more than non profit; it must meet one of the definitions found in R.C. Chapter 5709. In the present appeal, Northeast claims it is a charitable entity. In paragraph one of the syllabus in *Planned Parenthood Assn. v. Tax Commr.* (1966), 5 Ohio St.2d 177, the Supreme Court defines “charity” in the following manner:

“In 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 record reveals that Northeast was founded by Portage Path and that Portage Path is a charitable entity. However, Portage Path’s status does not vicariously inure to the benefit of Northeast. See *OCLC Online Computer Library Ctr. v. Kinney* (1984), 11 Ohio St. 3d 198.

The Tax Commissioner concluded that Northeast was much more than an entity structured to assist Portage Path in its charitable goals. The Tax

Commissioner found that Northeast leased property to both non-profit and for-profit organizations; Northeast provided outsourced medical staffing to others and offered fee-based consulting services. S.T., at 3. At the hearing before the board, Northeast presented its financial statements for tax years 2002 and 2003. Both years revealed revenues for psychiatric staffing (\$932,446 for 2003, \$616,096 for 2002), patient fees (\$9,774 for 2003, \$26,924 for 2002), and parking revenues (\$3,470 for 2003, \$2,887 for 2002). Appellant's Ex. 18, at 3. While Northeast tries to limit the discussion to only those activities taking place on the subject property, for purposes of determining the standard by which Northeast's activities are considered, this board must consider the corporation as a whole, and not merely its relationship to the subject property.

It is possible for an institution to be non profit and yet not charitable. In *Madisonville Community Urban Redevelopment Corp. v. Tracy* (Mar. 2, 2001) BTA No. 1998-L-858, unreported, the board found that the property owner, a non-profit entity organized pursuant to R.C. Chapter 1702 to redevelop a blighted area in Cincinnati, was not a charitable or educational institution for purposes of R.C. 5709.121:

"Its purpose is to improve private economic development and spur job growth in the community. While this is an important undertaking, it does not satisfy the statutory requirements that the property be owned by a charitable or educational institution or the state or political subdivision. *Episcopal Parish v. Kenney* (1979), 58 Ohio St. 2d 199; *Highland Park Owner's Inc. v. Tracy* (1994), 71 Ohio St. 3d 405." Id. 10.

The board similarly finds Northeast's purpose to support mental health services in the Summit County area to be an admirable undertaking. In practice, however, Northeast's activities are more akin to commercial, income-producing activities. Providing psychiatric staffing services benefits the psychiatrists being placed and the institutions hiring the psychiatrists. The benefit to the community as a whole is attenuated at best.

Thus, we find that, for purposes of R.C. 5709.121, Northeast is not a charitable institution.<sup>2</sup> Therefore, pursuant to R.C. 5709.12, to have its property exempted from real property taxation, Northeast must use the property exclusively (primarily) for charitable purposes. In the present matter, Northeast leases its property to both non-profit and for-profit entities. In *Thomaston Woods Limited Partnership v. Lawrence* (June 15, 2001), BTA No. 1999-L-551, unreported, this board held that leasing a property commercially violates the second prong of R.C. 5709.12(B) – that real property belonging to an institution must be used “exclusively for charitable purposes” – in order to be exempt from taxation. This board held:

“While educational organizations lease the property for laudable purposes and perhaps at below market rents, it does not change the fact that the property owner ‘uses’ the subject property to lease to third parties. When a lease situation exists where it is the lessee who is doing the charitable work, then for purposes of R.C. 5709.12(B), the lessor’s primary use of the property is the leasing. *Lincoln Memorial Hospital v. Warren* (1968), 13 Ohio St.2d 109.” Id at 9.

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<sup>2</sup> This finding distinguishes this matter from *Community Health Professionals, Inc., v. Levin*, 113 Ohio St.3d 432, 2007-Ohio-2336. The Supreme Court in that case emphasized the fact that the Tax Commissioner found the property holder to be a “charitable organization.” In the present matter, the Tax Commissioner has specifically found that Northeast “is not a charitable entity.” S.T., at 2.

See, also, *Lincoln Mem. Hosp., Inc. v. Warren* (1968), 13 Ohio St.2d 109; *Evans Investment Company v. Licking Cty. Bd. of Revision* (Feb. 10, 1988), BTA No. 1985-C-1112, unreported, affirmed (1988), 51 Ohio App.3d 104.

In the present appeal, the owner, Northeast, uses its property by leasing it to both for-profit and non-profit entities. However, Northeast seeks exemption for only that portion of the property used for charitable purposes. The General Assembly, by virtue of R.C. 5709.121, allows charitable institutions greater latitude in the manner in which property owned by those institutions may be used. During the relevant period, R.C. 5709.121 provided:

“Real property and tangible personal property belonging to a charitable \*\*\* institution \*\*\* shall be considered as used exclusively for charitable \*\*\* purposes by such institution, \*\*\* if it meets one of the following requirements:

“(A) It is used by such institution \*\*\* under a lease, sublease, or other contractual arrangement;

“(1) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;

“(2) For other charitable, educational, or public purposes.

“(B) It is made available under the direction or control of such institution, \*\*\* for use in furtherance of or incidental to its \*\*\* charitable \*\*\* purposes and not with a view to profit.”

R.C. 5709.121 permits a charity to allow another to use its property under a lease, as long as the use of the property is in furtherance of or incidental to a charitable purpose and the use is made without a view to profit. However, as the Tax Commissioner

found that Northeast was not a charitable institution, and we agree, Northeast cannot avail itself of the more liberal uses permitted by R.C. 5709.121.

Therefore, considering the record, statutes, and case law, this Board of Tax Appeals finds the Tax Commissioner was correct when he denied exemption for tax year 2003. Accordingly, the matter must be, and hereby is, affirmed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

  
Sally F. Van Meter, Board Secretary

-EXPCITE-

TITLE 26 - INTERNAL REVENUE CODE  
Subtitle A - Income Taxes  
CHAPTER 1 - NORMAL TAXES AND SURTAXES  
Subchapter F - Exempt Organizations  
PART I - GENERAL RULE

-HEAD-

Sec. 501. Exemption from tax on corporations, certain trusts, etc.

-STATUTE-

(a) Exemption from taxation

An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on unrelated business income and certain other activities

An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations

The following organizations are referred to in subsection (a):

(1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation

(A) is exempt from Federal income taxes -

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of

law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (1).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section. Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

**OHIO TRUST CODE ( Bupp, D.)** To clarify and modify the law relating to disclaimers under the Ohio Trust Code.

**This Act had been signed by the Governor.** Page numbers will not correspond with the final printed version, but the languages remain the same.

**Passed : March 11, 2008**

**Signed by the Governor: March 21, 2008**

**Effective: June 20, 2008**

## **127<sup>th</sup> General Assembly**

### **Substitute House Bill Number 160**

#### **An Act**

**Representatives:** Bupp, Latta, Seitz, Book, Adams, Batchelder, Blessing, Brown, Budish, Chandler, Coley, Combs, Daniels, DeBose, Domenick, Fende, Gibbs, Harwood, Hite, Huffman, Hughes, Letson, Luckie, Otterman, Raussen, Schindel, Schneider, Stebelton, Wagoner, Zehringer

**Senators:** Goodman, Seitz, Kearney, Harris, Schaffer, Spada

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#### **A BILL**

To amend sections 319.20, 1705.02, 5713.08, 5715.27,	1
and 5815.36 and to enact section 5701.14 of the	2
Revised Code to clarify and modify the law	3
relating to disclaimers under the Ohio Trust	4
Code, to provide that a limited liability company	5
may be a nonprofit entity, and to make changes	6
regarding certain tax exemptions.	7

#### **BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

<b>Section 1.</b> That sections 319.20, 1705.02, 5713.08, 5715.27,	8
and 5815.36 be amended and section 5701.14 of the Revised Code be	9
enacted to read as follows:	10

**Sec. 319.20.** After complying with sections 319.202, 315.251, 11  
and 319.203 of the Revised Code, and on application and 12  
presentation of title, with the affidavits required by law, or the 13  
proper order of a court, bearing the last known address of the 14  
grantee, or of any one of the grantees named in the title, and a 15  
reference to the volume and page of the recording of the next 16  
preceding recorded instrument by or through which the grantor 17  
claims title, the county auditor shall transfer any land or town 18  
lot or part thereof, minerals therein, or mineral rights thereto, 19  
charged with taxes on the tax list, from the name in which it 20  
stands into the name of the owner, when rendered necessary by a 21  
conveyance, partition, devise, descent, or otherwise. If by reason 22  
of the conveyance or otherwise, a part only of a tract or lot, 23  
minerals therein, or mineral rights thereto, as charged in the tax 24  
list, is to be transferred, the auditor shall determine the tax 25  
value of the part of a tract or lot of real estate, minerals 26  
therein, or mineral rights thereto, so transferred, and the value 27  
of the remaining part compared with the value of the whole. 28

Whenever a part only of a tract or lot of real estate has 29  
been transferred by the auditor and the tract or lot bears unpaid 30  
taxes, penalties, interest, or special assessments, the unpaid 31  
taxes, penalties, interest, or special assessments shall 32  
immediately be apportioned, upon demand or request by the 33  
transferee or remaining owner, in the following manner: 34

(A) The auditor shall allocate to the part so transferred, 35  
and to the remaining part, amounts of any current or delinquent 36  
taxes, interest, or penalties that have accrued against the parcel 37  
as a whole, proportionate to their respective values. 38

(B) The lien of taxes, penalties, interest, and special 39  
assessments, as levied against the original tract, shall extend to 40  
the part so transferred and the part remaining only to the extent 41  
of the amounts so allocated to the respective parts. 42

This section does not change the total amount of taxes, 43  
special assessments, or other charges as originally levied, or the 44

total amount of the balance due. The auditor shall certify such apportionments to the county treasurer. 45  
46

Whenever the state acquires an entire parcel or a part only of a parcel of real property in fee simple, the county auditor, upon application of the grantor or property owner or the state, which application shall contain a description of the property as it appears on the tax list and the date of transfer of ownership, shall prepare an estimate of the taxes that are a lien on the property, but have not been determined, assessed, and levied for the year in which the property was acquired. The county auditor shall thereupon apportion the estimated taxes proportionately between the grantor and the state for the period of the lien year that each had or shall have had ownership or possession of the property, whichever is earlier. The county treasurer shall accept payment from the state for estimated taxes at the time that the real property is acquired. If the state has paid in full in the year in which the property is acquired that proportion of the estimated taxes that the tax commissioner determines are not subject to remission by the county auditor for such year under division ~~(C)~~(D) of section 5713.08 of the Revised Code, the estimated taxes paid shall be considered the tax liability on the exempted property for that year. 47  
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Section 319.42 of the Revised Code applies to the apportionment of special assessments. 67  
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Complaint against such values as determined by the auditor or the allocation of assessments by the certifying authority may be filed by the transferee or the remaining owner, and if filed, proceedings including appeals shall be had in the manner and within the time provided by sections 5717.01 to 5717.06 and 5715.19 to 5715.22 of the Revised Code, for complaints against valuation or assessment of real property. 69  
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The auditor shall endorse on the deed or other evidences of title presented to the auditor that the proper transfer of the real estate described in the deed has been made in the auditor's 76  
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office or that it is not entered for taxation, and sign the 79  
auditor's name to the deed. The address of the grantee, or any 80  
one of the grantees, set forth in the deed or other evidences of 81  
title shall be entered by the auditor on the transfer sheets and 82  
on the general tax list of real property prepared pursuant to 83  
section 319.28 of the Revised Code. 84

**Sec. 1705.02.** A limited liability company may be formed for 85  
any purpose or purposes for which individuals lawfully may 86  
associate themselves, including for any profit or nonprofit 87  
purpose, except that, if the Revised Code contains special 88  
provisions for the formation of any designated type of corporation 89  
other than a professional association, a limited liability company 90  
shall not be formed for the purpose or purposes for which that 91  
type of corporation may be formed. At the request or direction of 92  
the government of the United States or any agency of that 93  
government, a limited liability company may transact any lawful 94  
business in aid of the national defense or in the prosecution of 95  
any war in which the United States is engaged. 96

**Sec. 5701.14.** For purposes of Title LVII of the Revised 97  
Code: 98

(A) In order to determine a limited liability company's 99  
nonprofit status, an entity is operating with a nonprofit purpose 100  
under section 1705.02 of the Revised Code if that entity is 101  
organized other than for the pecuniary gain or profit of, and its 102  
net earnings or any part of its net earnings are not 103  
distributable to, its members, its directors, its officers, or 104  
other private persons, except that the payment of reasonable 105  
compensation for services rendered, payments and distributions in 106  
furtherance of its nonprofit purpose, and the distribution of 107  
assets on dissolution permitted by section 1702.49 of the Revised 108  
Code are not pecuniary gain or profit or distribution of net 109  
earnings. In no event shall payments and distributions in 110  
furtherance of an entity's nonprofit purpose deprive the entity of 111  
its nonprofit status as long as all of the members of that entity 112  
are operating with a nonprofit purpose. 113

(B) A single member limited liability company that operates 114  
with a nonprofit purpose, as described in division (A) of this 115  
section, shall be treated as part of the same legal entity as its 116  
nonprofit member, and all assets and liabilities of that single 117  
member limited liability company shall be considered to be that 118  
of the nonprofit member. Filings or applications for exemptions 119  
or other tax purposes may be made either by the single member 120  
limited liability company or its nonprofit member. 121

**Sec. 5713.08.** (A) The county auditor shall make a list of 122  
all real and personal property in the auditor's county, ~~including~~ 123  
~~money, credits, and investments in bonds, stocks, or otherwise,~~ 124  
~~which~~ that is exempted from taxation. Such list shall show the 125  
name of the owner, the value of the property exempted, and a 126  
statement in brief form of the ground on which such exemption has 127  
been granted. It shall be corrected annually by adding thereto the 128  
items of property which have been exempted during the year, and by 129  
striking therefrom the items which in the opinion of the auditor 130  
have lost their right of exemption and which have been reentered 131  
on the taxable list, but no property shall be struck from the 132  
exempt property list solely because the property has been conveyed 133  
to a single member limited liability company with a nonprofit 134  
purpose from its nonprofit member or because the property has 135  
been conveyed by a single member limited liability company with a 136  
nonprofit purpose to its nonprofit member. No additions shall be 137  
made to such exempt lists and no additional items of property 138  
shall be exempted from taxation without the consent of the tax 139  
commissioner as is provided for in section 5715.27 of the Revised 140  
Code or without the consent of the housing officer under section 141  
3735.67 of the Revised Code. ~~When any personal property or~~ 142  
~~endowment fund of an institution has once been held by the~~ 143  
~~commissioner to be properly exempt from taxation, it is not~~ 144  
~~necessary to obtain the commissioner's consent to the exemption of~~ 145  
~~additional property or investments of the same kind belonging to~~ 146  
~~the same institution, but such property shall appear on the~~ 147  
~~abstract filed annually with the commissioner.~~ The commissioner 148  
may revise at any time the list in every county so that no 149

property is improperly or illegally exempted from taxation. The 150  
auditor shall follow the orders of the commissioner given under 151  
this section. An abstract of such list shall be filed annually 152  
with the commissioner, on a form approved by the commissioner, 153  
and a copy thereof shall be kept on file in the office of each 154  
auditor for public inspection. 155

~~The commissioner shall not consider an~~ application for 156  
exemption of property ~~unless the application has attached thereto~~ 157  
shall include a certificate executed by the county treasurer 158  
certifying one of the following: 159

(1) That all taxes, ~~assessments~~, interest, and penalties 160  
levied and assessed against the property sought to be exempted 161  
have been paid in full ~~to~~ for all of the tax years preceding the 162  
~~date upon~~ tax year for which the application for exemption is 163  
filed, except for such taxes, interest, and penalties that may be 164  
remitted under division ~~(B)~~(C) of this section; 165

(2) That the applicant has entered into a valid delinquent 166  
tax contract with the county treasurer pursuant to division (A) of 167  
section 323.31 of the Revised Code to pay all of the delinquent 168  
taxes, ~~assessments~~, interest, and penalties charged against the 169  
property, except for such taxes, interest, and penalties that may 170  
be remitted under division ~~(B)~~(C) of this section. If the auditor 171  
receives notice under section 323.31 of the Revised Code that such 172  
a written delinquent tax contract has become void, the auditor 173  
shall strike such property from the list of exempted property and 174  
reenter such property on the taxable list. If property is removed 175  
from the exempt list because a written delinquent tax contract has 176  
become void, current taxes shall first be extended against that 177  
property on the general tax list and duplicate of real and public 178  
utility property for the tax year in which the auditor receives 179  
the notice required by division (A) of section 323.31 of the 180  
Revised Code that the delinquent tax contract has become void or, 181  
if that notice is not timely made, for the tax year in which falls 182  
the latest date by which the treasurer is required by such section 183  
to give such notice. A county auditor shall not remove from any 184

tax list and duplicate the amount of any unpaid delinquent taxes, 185  
assessments, interest, or penalties owed on property that is 186  
placed on the exempt list pursuant to this division. 187

(3) That a tax certificate has been issued under section 188  
5721.32 or 5721.33 of the Revised Code with respect to the 189  
property that is the subject of the application, and the tax 190  
certificate is outstanding. 191

(B) If the treasurer's certificate is not included with the 192  
application or the certificate reflects unpaid taxes, penalties,  
and interest that may not be remitted, the tax commissioner shall 193  
notify the property owner of that fact, and the applicant shall 194  
be given sixty days from the date that notification was mailed in 195  
which to provide the tax commissioner with a corrected 196  
treasurer's certificate. If a corrected treasurer's certificate 197  
is not received within the time permitted, the tax commissioner 198  
does not have authority to consider the tax exemption 199  
application. 200  
201

(C) Any taxes, interest, and penalties which have become a 202  
lien after the property was first used for the exempt purpose, but 203  
in no case prior to the date of acquisition of the title to the 204  
property by the applicant, may be remitted by the commissioner, 205  
except as is provided in division (A) of section 5713.081 of the 206  
Revised Code. 207

~~(C)~~(D) Real property acquired by the state in fee simple is 208  
exempt from taxation from the date of acquisition of title or date 209  
of possession, whichever is the earlier date, provided that all 210  
taxes, interest, and penalties as provided in the apportionment 211  
provisions of section 319.20 of the Revised Code have been paid to 212  
the date of acquisition of title or date of possession by the 213  
state, whichever is earlier. The proportionate amount of taxes 214  
that are a lien but not yet determined, assessed, and levied for 215  
the year in which the property is acquired, shall be remitted by 216  
the county auditor for the balance of the year from date of 217  
acquisition of title or date of possession, whichever is earlier. 218

This section shall not be construed to authorize the exemption of such property from taxation or the remission of taxes, interest, and penalties thereon until all private use has terminated.

Sec. 5715.27. (A) Except as provided in section 3735.67 of the Revised Code, the owner, a vendee in possession under a purchase agreement or a land contract, the beneficiary of a trust, or a lessee for an initial term of not less than thirty years of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes, interest, and penalties be remitted as provided in division ~~(B)~~(C) of section 5713.08 of the Revised Code.

(B) The board of education of any school district may request the tax commissioner to provide it with notification of applications for exemption from taxation for property located within that district. If so requested, the commissioner shall send to the board ~~for the quarters ending on the last day of March, June, September, and December of each year,~~ on a monthly basis reports that contain sufficient information to enable the board to identify each property that is the subject of an exemption application, including, but not limited to, the name of the property owner or applicant, the address of the property, and the auditor's parcel number. The commissioner shall mail the reports ~~on or about~~ by the fifteenth day of the month following the end of the ~~quarter~~ month in which the commissioner receives the applications for exemption.

(C) A board of education that has requested notification under division (B) of this section may, with respect to any application for exemption of property located in the district and included in the commissioner's most recent report provided under that division, file a statement with the commissioner and with the applicant indicating its intent to submit evidence and participate in any hearing on the application. The statements shall be filed prior to the first day of the third month following the end of the ~~quarter~~ month in which that application was docketed by the

commissioner. A statement filed in compliance with this division 254  
entitles the district to submit evidence and to participate in any 255  
hearing on the property and makes the district a party for 256  
purposes of sections 5717.02 to 5717.04 of the Revised Code in any 257  
appeal of the commissioner's decision to the board of tax appeals. 258

(D) The commissioner shall not hold a hearing on or grant or 259  
deny an application for exemption of property in a school district 260  
whose board of education has requested notification under division 261  
(B) of this section until the end of the period within which the 262  
board may submit a statement with respect to that application 263  
under division (C) of this section. The commissioner may act upon 264  
an application at any time prior to that date upon receipt of a 265  
written waiver from each such board of education, or, in the case 266  
of exemptions authorized by section 725.02, 1728.10, 5709.40, 267  
5709.41, 5709.411, 5709.62, or 5709.63, 5709.632, 5709.73, 268  
5709.78, 5709.84, or 5709.88 of the Revised Code, upon the request 269  
of the property owner. Failure of a board of education to receive 270  
the report required in division (B) of this section shall not void 271  
an action of the commissioner with respect to any application. The 272  
commissioner may extend the time for filing a statement under 273  
division (C) of this section. 274

(E) A complaint may also be filed with the commissioner by 275  
any person, board, or officer authorized by section 5715.19 of the 276  
Revised Code to file complaints with the county board of revision 277  
against the continued exemption of any property granted exemption 278  
by the commissioner under this section. 279

(F) An application for exemption and a complaint against 280  
exemption shall be filed prior to the thirty-first day of December 281  
of the tax year for which exemption is requested or for which the 282  
liability of the property to taxation in that year is requested. 283  
The commissioner shall consider such application or complaint in 284  
accordance with procedures established by the commissioner, 285  
determine whether the property is subject to taxation or exempt 286  
therefrom, and certify the commissioner's findings to the auditor, 287  
who shall correct the tax list and duplicate accordingly. If a 288

tax certificate has been sold under section 5721.32 or 5721.33 of	289
the Revised Code with respect to property for which an exemption	290
has been requested, the tax commissioner shall also certify the	291
findings to the county treasurer of the county in which the	292
property is located.	293
(G) Applications and complaints, and documents of any kind	294
related to applications and complaints, filed with the tax	295
commissioner under this section, are public records within the	296
meaning of section 149.43 of the Revised Code.	297
(H) If the commissioner determines that the use of property	298
or other facts relevant to the taxability of property that is the	299
subject of an application for exemption or a complaint under this	300
section has changed while the application or complaint was	301
pending, the commissioner may make the determination under	302
division (F) of this section separately for each tax year	303
beginning with the year in which the application or complaint was	304
filed or the year for which remission of taxes under division	305
<del>(B)</del> (C) of section 5713.08 of the Revised Code was requested, and	306
including each subsequent tax year during which the application or	307
complaint is pending before the commissioner.	308
Sec. 5815.36. (A) As used in this section:	309
(1) "Disclaimant" means any person, any guardian or personal	310
representative of a person or estate of a person, or any	311
attorney-in-fact or agent of a person having a general or specific	312
authority to act granted in a written instrument, who is any of	313
the following:	314
(a) With respect to testamentary instruments and intestate	315
succession, an heir, next of kin, devisee, legatee, donee, person	316
succeeding to a disclaimed interest, surviving joint tenant,	317
surviving tenant by the entireties, surviving tenant of a tenancy	318
with a right of survivorship, beneficiary under a testamentary	319
instrument, or person designated to take pursuant to a power of	320
appointment exercised by a testamentary instrument;	321

(b) With respect to nontestamentary instruments, a grantee, donee, person succeeding to a disclaimed interest, surviving joint tenant, surviving tenant by the entireties, surviving tenant of a tenancy with a right of survivorship, beneficiary under a nontestamentary instrument, or person designated to take pursuant to a power of appointment exercised by a nontestamentary instrument;

(c) With respect to fiduciary rights, privileges, powers, and immunities, a fiduciary under a testamentary or nontestamentary instrument. This Division (A)(1)(c) of this section does not authorize a fiduciary who disclaims fiduciary rights, privileges, powers, and immunities to disclaim cause the rights of beneficiaries any beneficiary to be disclaimed unless the instrument creating the fiduciary relationship authorizes the fiduciary to make such a disclaimer.

(d) Any person entitled to take an interest in property upon the death of a person or upon the occurrence of any other event.

(2) "Personal representative" includes any fiduciary as defined in section 2109.01 of the Revised Code and any executor, trustee, guardian, or other person or entity having a fiduciary relationship with regard to any interest in property passing to the fiduciary, executor, trustee, guardian, or other person or entity by reason of a disclaimant's death.

(3) "Property" means all forms of property, real and personal, tangible and intangible.

(B)(1) A disclaimant, other than a fiduciary under an instrument who is not authorized by the instrument to disclaim the interest of a beneficiary, may disclaim, in whole or in part, the succession to any property by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided in this section.

(2) A disclaimant who is a fiduciary under an instrument may disclaim, in whole or in part, any right, power, privilege, or

immunity, by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided in this section.

(3) The written instrument of disclaimer shall be signed and acknowledged by the disclaimant and shall contain all of the following:

(a) A reference to the donative instrument;

(b) A description of the property, part of property, or interest disclaimed, and of any fiduciary right, power, privilege, or immunity disclaimed;

(c) A declaration of the disclaimer and its extent.

(4) The guardian of the estate of a minor or an incompetent, or the personal representative of a deceased person, whether or not authorized by the instrument to disclaim, with the consent of the probate division of the court of common pleas, may disclaim, in whole or in part, the succession to any property, or interest in property, that the ward, if an adult and competent, or the deceased, if living, might have disclaimed. The guardian or personal representative, or any interested person may file an application with the probate division of the court of common pleas that has jurisdiction of the estate, asking that the court order the guardian or personal representative to execute and deliver, file, or record the disclaimer on behalf of the ward ~~or~~ estate, or deceased person. The court shall order the guardian or personal representative to execute and deliver, file, or record the disclaimer if the court finds, upon hearing after notice to interested parties and such other persons as the court shall direct, that:

(a) It is in the best interests of those interested in the estate of the person and of those who will take the disclaimed interest;

(b) It would not materially, adversely affect the minor or

incompetent, or the beneficiaries of the estate of the decedent, 387  
taking into consideration other available resources and the age, 388  
probable life expectancy, physical and mental condition, and 389  
present and reasonably anticipated future needs of the minor or 390  
incompetent or the beneficiaries of the estate of the decedent. 391

A written instrument of disclaimer ordered by the court under 392  
this division shall be executed and be delivered, filed, or 393  
recorded within the time and in the manner in which the person 394  
could have disclaimed if the person were living, an adult, and 395  
competent. 396

(C) A partial disclaimer of property that is subject to a 397  
burdensome interest created by the donative instrument is not 398  
effective unless the disclaimed property constitutes a gift that 399  
is separate and distinct from undisclaimed gifts. 400

(D) The disclaimant shall deliver, file, or record the 401  
disclaimer, or cause the same to be done, ~~not later than nine~~ 402  
months prior to accepting any benefits of the disclaimed interest 403  
and at any time after the latest of the following dates: 404

(1) The effective date of the donative instrument if both the 405  
taker and the taker's interest in the property are finally 406  
ascertained on that date; 407

(2) The date of the occurrence of the event upon which both 408  
the taker and the taker's interest in the property become finally 409  
ascertainable; 410

(3) The date on which the disclaimant attains ~~twenty-one~~ 411  
eighteen years of age or is no longer an incompetent, without 412  
tendering or repaying any benefit received while the disclaimant 413  
was under ~~twenty-one~~eighteen years of age or an incompetent, and 414  
even if a guardian of a minor or incompetent had filed an 415  
application pursuant to division (B)(4) of this section and the 416  
probate division of the court of common pleas involved did not 417  
consent to the guardian executing a disclaimer. 418

(E) No disclaimer instrument is effective under this section	419
if either of the following applies under the terms of the	420
disclaimer instrument:	421
(1) The disclaimant has power to revoke the disclaimer.	422
(2) The disclaimant may transfer, or direct to be	423
transferred, to self the entire legal and equitable ownership of	424
the property subject to the disclaimer instrument.	425
(F)(1) Subject to division (F)(2) of this section, if the	426
interest disclaimed is created by a nontestamentary instrument,	427
the disclaimer instrument shall be delivered personally or by	428
certified mail to the trustee or other person who has legal title	429
to, or possession of, the property disclaimed.	430
(2) If the interest disclaimed is created by a testamentary	431
instrument, by intestate succession, by a transfer on death deed	432
pursuant to section 5302.22 of the Revised Code, or by a	433
certificate of title to a motor vehicle, watercraft, or outboard	434
motor that evidences ownership of the motor vehicle, watercraft,	435
or outboard motor that is transferable on death pursuant to	436
section 2131.13 of the Revised Code, the disclaimer instrument	437
shall be filed in the probate division of the court of common	438
pleas in the county in which proceedings for the administration of	439
the decedent's estate have been commenced, and an executed copy of	440
the disclaimer instrument shall be delivered personally or by	441
certified mail to the personal representative of the decedent's	442
estate.	443
(3) If no proceedings for the administration of the	444
decedent's estate have been commenced, the disclaimer instrument	445
shall be filed in the probate division of the court of common	446
pleas in the county in which proceedings for the administration of	447
the decedent's estate might be commenced according to law. The	448
disclaimer instrument shall be filed and indexed, and fees	449
charged, in the same manner as provided by law for an application	450
to be appointed as personal representative to administer the	451

decedent's estate. The disclaimer is effective whether or not 452  
proceedings thereafter are commenced to administer the decedent's 453  
estate. If proceedings thereafter are commenced for the 454  
administration of the decedent's estate, they shall be filed 455  
under, or consolidated with, the case number assigned to the 456  
disclaimer instrument. 457

(4) If an interest in real estate is disclaimed, an executed 458  
copy of the disclaimer instrument also shall be recorded in the 459  
office of the recorder of the county in which the real estate is 460  
located. The disclaimer instrument shall include a description of 461  
the real estate with sufficient certainty to identify it, and 462  
shall contain a reference to the record of the instrument that 463  
created the interest disclaimed. If title to the real estate is 464  
registered under Chapters 5309. and 5310. of the Revised Code, the 465  
disclaimer interest shall be entered as a memorial on the last 466  
certificate of title. A spouse of a disclaimant has no dower or 467  
other interest in the real estate disclaimed. 468

(G) ~~Unless the~~ If a donative instrument expressly provides 469  
~~that, if there is~~ for the distribution of property, part of 470  
~~property, or interest in property if there is a disclaimer, there~~ 471  
~~shall not be any acceleration of remainders or other interests,~~ 472  
~~the property, part of property, or interest disclaimed shall be~~ 473  
~~distributed or disposed of, and accelerated or not accelerated, in~~ 474  
~~accordance with the donative instrument. In the absence of express~~ 475  
~~provisions to the contrary in the donative instrument,~~ the 476  
property, part of property, or interest in property disclaimed, 477  
and any future interest that is to take effect in possession or 478  
enjoyment at or after the termination of the interest disclaimed, 479  
shall descend, be distributed, or otherwise be disposed of, and 480  
shall be accelerated, in the following manner: 481

(1) If intestate or testate succession is disclaimed, as if 482  
the disclaimant had predeceased the decedent; 483

(2) If the disclaimant is one designated to take pursuant to 484  
a power of appointment exercised by a testamentary instrument, as 485

if the disclaimant had predeceased the donee of the power;	486
(3) If the donative instrument is a nontestamentary instrument, as if the disclaimant had died before the effective date of the nontestamentary instrument;	487 488 489
(4) If the disclaimer is of a fiduciary right, power, privilege, or immunity, as if the right, power, privilege, or immunity was never in the donative instrument.	490 491 492
(H) A disclaimer pursuant to this section is effective as of, and relates back for all purposes to, the date upon which the taker and the taker's interest have been finally ascertained.	493 494 495
(I) A disclaimant who has a present and future interest in property, and disclaims the disclaimant's present interest in whole or in part, is considered to have disclaimed the disclaimant's future interest to the same extent, unless a contrary intention appears in the disclaimer instrument or the donative instrument. A disclaimant is not precluded from receiving, as an alternative taker, a beneficial interest in the property disclaimed, unless a contrary intention appears in the disclaimer instrument or in the donative instrument.	496 497 498 499 500 501 502 503 504
(J) The disclaimant's right to disclaim under this section is barred if, <del>before the expiration of the period within which the disclaimant may disclaim the interest,</del> the disclaimant does any of the following:	505 506 507 508
(1) Assigns, conveys, encumbers, pledges, or transfers, or contracts to assign, convey, encumber, pledge, or transfer, the property or any interest in it;	509 510 511
(2) Waives in writing the disclaimant's right to disclaim and executes and delivers, files, or records the waiver in the manner provided in this section for a disclaimer instrument;	512 513 514
(3) Accepts the property or an interest in it;	515

(4) Permits or suffers a sale or other disposition of the property pursuant to judicial action against the disclaimant.	516 517
(K) <del>A</del> <u>Neither a fiduciary's application for appointment or assumption of duties as a fiduciary does not waive nor a beneficiary's application for appointment as a personal representative or fiduciary waives or bars</u> the disclaimant's right to disclaim a right, power, privilege, or immunity <u>as a personal representative or fiduciary or the beneficiary's right to disclaim property.</u>	518 519 520 521 522 523 524
(L) The right to disclaim under this section exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.	525 526 527
(M) A disclaimer instrument or written waiver of the right to disclaim that has been executed and delivered, filed, or recorded as required by this section is final and binding upon all persons.	528 529 530
(N) The right to disclaim and the procedures for disclaimer established by this section are in addition to, and do not exclude or abridge, any other rights or procedures <del>existing that exist or</del> <u>formerly existed</u> under any other section of the Revised Code or at common law to assign, convey, release, refuse to accept, renounce, waive, or disclaim property.	531 532 533 534 535 536
(O)(1) No person is liable for distributing or disposing of property in a manner inconsistent with the terms of a valid disclaimer if the distribution or disposition is otherwise proper and the person has no actual knowledge of the disclaimer.	537 538 539 540
(2) No person is liable for distributing or disposing of property in reliance upon the terms of a disclaimer that is invalid because the right of disclaimer has been waived or barred if the distribution or disposition is otherwise proper and the person has no actual knowledge of the facts that constitute a waiver or bar to the right to disclaim.	541 542 543 544 545 546
(P)(1) A disclaimant may disclaim pursuant to this section	547

any interest in property that is in existence on September 27, 1976, if either the interest in the property or the taker of the interest in the property is not finally ascertained on that date.	548 549 550
(2) No disclaimer executed pursuant to this section destroys or diminishes an interest in property that exists on September 27, 1976, in any person other than the disclaimant.	551 552 553
<u>(Q) This section may be applied separately to different interests or powers created in the disclaimant by the same testamentary or nontestamentary instrument.</u>	554 555 556
<b>Section 2.</b> That existing sections 319.20, 1705.02, 5713.08, 5715.27, and 5815.36 of the Revised Code are hereby repealed.	557 558
<b>Section 3.</b> Sections 319.20, 5713.08, and 5715.27 of the Revised Code, as amended by this act, are remedial in nature and apply to the tax years at issue in any application for exemption from taxation pending before the Tax Commissioner, the Board of Tax Appeals, the Court of Appeals, or the Supreme Court on the effective date of this act and to that property that is the subject of any application.	559 560 561 562 563 564 565
<b>Section 4.</b> The amendments to divisions (A), (B), (G), (K), (N), and (Q) of section 5815.36 of the Revised Code contained in Section 1 of this act are intended to clarify and be declaratory of the law as it existed prior to the enactment of this act and shall be construed accordingly.	566 567 568 569 570
<b>Section 5.</b> The General Assembly recognizes that section 2518 of the Internal Revenue Code defines a qualified disclaimer, in part, as a written refusal by a person to accept an interest in property that is received by the transferor of the interest within nine months after the later of the date on which the transfer creating the interest is made and the date on which the person attains twenty-one years of age. By amending division (D) of section 5815.36 of the Revised Code to eliminate a reference to the nine-month period, the General Assembly intends to create the possibility that some disclaimers governed by the law of this	571 572 573 574 575 576 577 578 579 580

state will be qualified under section 2518 of the Internal Revenue Code and some will not be qualified under that section. 581  
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**Section 6.** Section 1705.02 of the Revised Code, as amended by this act, and section 5701.14 of the Revised Code, as enacted by this act, apply to limited liability companies that were in existence prior to the effective date of this act and that assert to be nonprofit limited liability companies. 583  
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## **5709.12 Exemption of property used for public or charitable purposes.**

(A) As used in this section, "independent living facilities" means any residential housing facilities and related property that are not a nursing home, residential care facility, or adult care facility as defined in division (A) of section 5701.13 of the Revised Code.

(B) 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, including real property belonging to an institution that is a nonprofit corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code at any time during the tax year and being held for leasing or resale to others. If, at any time during a tax year for which such property is exempted from taxation, the corporation ceases to qualify for such a grant, the director of development shall notify the tax commissioner, and the tax commissioner shall cause the property to be restored to the tax list beginning with the following tax year. All property owned and used by a nonprofit organization exclusively for a home for the aged, as defined in section 5701.13 of the Revised Code, also shall be exempt from taxation.

(C)(1) If a home for the aged described in division (B)(1) of section 5701.13 of the Revised Code is operated in conjunction with or at the same site as independent living facilities, the exemption granted in division (B) of this section shall include kitchen, dining room, clinic, entry ways, maintenance and storage areas, and land necessary for access commonly used by both residents of the home for the aged and residents of the independent living facilities. Other facilities commonly used by both residents of the home for the aged and residents of independent living units shall be exempt from taxation only if the other facilities are used primarily by the residents of the home for the aged. Vacant land currently unused by the home, and independent living facilities and the lands connected with them are not exempt from taxation. Except as provided in division (A)(1) of section 5709.121 of the Revised Code, property of a home leased for nonresidential purposes is not exempt from taxation.

(2) Independent living facilities are exempt from taxation if they are operated in conjunction with or at the same site as a home for the aged described in division (B)(2) of section 5701.13 of the Revised Code; operated by a corporation, association, or trust described in division (B)(1)(b) of that section; operated exclusively for the benefit of members of the corporation, association, or trust who are retired, aged, or infirm; and provided to those members without charge in consideration of their service, without compensation, to a charitable, religious, fraternal, or educational institution. For the purposes of division (C)(2) of this section, "compensation" does not include furnishing room and board, clothing, health care, or other necessities, or stipends or other de minimis payments to defray the cost thereof.

(D)(1) A private corporation established under federal law, defined in 36 U.S.C. 1101, Pub. L. No. 102-199, 105 Stat. 1629, as amended, the objects of which include encouraging the advancement of science generally, or of a particular branch of science, the promotion of scientific research, the improvement of the qualifications and usefulness of scientists, or the increase and diffusion of scientific knowledge is conclusively presumed to be a charitable or educational institution. A private corporation

established as a nonprofit corporation under the laws of a state, that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C.A. 1, as amended, and has as its principal purpose one or more of the foregoing objects, also is conclusively presumed to be a charitable or educational institution.

The fact that an organization described in this division operates in a manner that results in an excess of revenues over expenses shall not be used to deny the exemption granted by this section, provided such excess is used, or is held for use, for exempt purposes or to establish a reserve against future contingencies; and, provided further, that such excess may not be distributed to individual persons or to entities that would not be entitled to the tax exemptions provided by this chapter. Nor shall the fact that any scientific information diffused by the organization is of particular interest or benefit to any of its individual members be used to deny the exemption granted by this section, provided that such scientific information is available to the public for purchase or otherwise.

(2) Division (D)(2) of this section does not apply to real property exempted from taxation under this section and division (A)(3) of section 5709.121 of the Revised Code and belonging to a nonprofit corporation described in division (D)(1) of this section that has received a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code during any of the tax years the property was exempted from taxation.

When a private corporation described in division (D)(1) of this section sells all or any portion of a tract, lot, or parcel of real estate that has been exempt from taxation under this section and section 5709.121 of the Revised Code, the portion sold shall be restored to the tax list for the year following the year of the sale and a charge shall be levied against the sold property in an amount equal to the tax savings on such property during the four tax years preceding the year the property is placed on the tax list. The tax savings equals the amount of the additional taxes that would have been levied if such property had not been exempt from taxation.

The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law. The charge may also be remitted for all or any portion of such property that the tax commissioner determines is entitled to exemption from real property taxation for the year such property is restored to the tax list under any provision of the Revised Code, other than sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, 5709.63, 5709.71, 5709.73, 5709.78, and 5709.84, upon an application for exemption covering the year such property is restored to the tax list filed under section 5715.27 of the Revised Code.

(E) Real property held by an organization organized and operated exclusively for charitable purposes as described under section 501(c)(3) of the Internal Revenue Code and exempt from federal taxation under section 501(a) of the Internal Revenue Code, 26 U.S.C.A. 501(a) and (c)(3), as amended, for the purpose of constructing or rehabilitating residences for eventual transfer to qualified low-income families through sale, lease, or land installment contract, shall be exempt from taxation.

The exemption shall commence on the day title to the property is transferred to the organization and shall continue to the end of the tax year in which the organization transfers title to the property to a qualified low-income family. In no case shall the exemption extend beyond the second succeeding tax year following the year in which the title was transferred to the organization. If the title is transferred

to the organization and from the organization to a qualified low-income family in the same tax year, the exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the tax year in which title is transferred to the organization shall be remitted by the county auditor for each day of the year that title is held by the organization.

Upon transferring the title to another person, the organization shall file with the county auditor an affidavit affirming that the title was transferred to a qualified low-income family or that the title was not transferred to a qualified low-income family, as the case may be; if the title was transferred to a qualified low-income family, the affidavit shall identify the transferee by name. If the organization transfers title to the property to anyone other than a qualified low-income family, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer and a charge shall be levied against the property in an amount equal to the amount of additional taxes that would have been levied if such property had not been exempt from taxation. The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

The application for exemption shall be filed as otherwise required under section 5715.27 of the Revised Code, except that the organization holding the property shall file with its application documentation substantiating its status as an organization organized and operated exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code and its qualification for exemption from federal taxation under section 501(a) of the Internal Revenue Code, and affirming its intention to construct or rehabilitate the property for the eventual transfer to qualified low-income families.

As used in this division, "qualified low-income family" means a family whose income does not exceed two hundred per cent of the official federal poverty guidelines as revised annually in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C.A. 9902, as amended, for a family size equal to the size of the family whose income is being determined.

Effective Date: 09-06-2002; 06-30-2005

## **5709.121 Exclusive charitable or public purposes defined.**

(A) Real property and tangible personal property belonging to a charitable or educational institution or to the state or a political subdivision, shall be considered as used exclusively for charitable or public purposes by such institution, the state, or political subdivision, if it meets one of the following requirements:

(1) It is used by such institution, the state, or political subdivision, or by one or more other such institutions, the state, or political subdivisions under a lease, sublease, or other contractual arrangement:

(a) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;

(b) For other charitable, educational, or public purposes.

(2) It is made available under the direction or control of such institution, the state, or political subdivision for use in furtherance of or incidental to its charitable, educational, or public purposes and not with the view to profit.

(3) It is used by an organization described in division (D) of section 5709.12 of the Revised Code. If the organization is a corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code at any time during the tax year, "used," for the purposes of this division, includes holding property for lease or resale to others.

(B)(1) Property described in division (A)(1)(a) of this section shall continue to be considered as used exclusively for charitable or public purposes even if the property is conveyed through one conveyance or a series of conveyances to an entity that is not a charitable or educational institution and is not the state or a political subdivision, provided that all of the following conditions apply with respect to that property:

(a) The property has been listed as exempt on the county auditor's tax list and duplicate for the county in which it is located for the ten tax years immediately preceding the year in which the property is conveyed through one conveyance or a series of conveyances;

(b) The owner to which the property is conveyed through one conveyance or a series of conveyances leases the property through one lease or a series of leases to the entity that owned or occupied the property for the ten tax years immediately preceding the year in which the property is conveyed or an affiliate of such prior owner or occupant;

(c) The property includes improvements that are at least fifty years old;

(d) The property is being renovated in connection with a claim for historic preservation tax credits available under federal law;

(e) The property continues to be used for the purposes described in division (A)(1)(a) of this section after its conveyance; and

(f) The property is certified by the United States secretary of the interior as a "certified historic structure" or certified as part of a certified historic structure.

(2) Notwithstanding section 5715.27 of the Revised Code, an application for exemption from taxation of property described in division (B)(1) of this section may be filed by either the owner of the property or its occupant.

Effective Date: 12-13-2001; 06-30-2005

## **5709.72 Exemption for library technology development.**

All tangible and intangible personal property shall be exempt from taxation if the following conditions exist in the year for which exemption is sought:

(A) The owner is a nonprofit corporation that is exempt from federal income taxes under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954, as amended, and the owner's primary purposes are conducting research and development in library technology and providing computerized or automated services to public, charitable, or educational libraries;

(B) The property is used in any of the following:

(1) Furnishing services to libraries and to similar information resource agencies or institutions whose activities directly benefit libraries, provided at least eighty per cent of the owner's revenues from furnishing those services are paid by libraries, agencies, and institutions that are public, charitable, or educational;

(2) Conducting research and development in technology specifically for use in libraries, the majority of which are public, charitable, or educational;

(3) Providing products, internal support, or auxiliary services related to activities described in divisions (B)(1) and (2) of this section.

Effective Date: 09-11-1985