

TABLE OF CONTENTS

TABLE OF AUTHORITIES vi-v

STATEMENT OF FACTS1-4

LAW AND ARGUMENT4

Proposition of Law No. I:

The BTA unreasonably and unlawfully concluded that it did not have jurisdiction to apply R.C. 5709.121 when the application of R.C. 5709.121 is a permissible alternative argument that sufficiently relates to Appellants claim that the Tax Commissioner unreasonably and unlawfully denied Appellant an exemption under R.C. 5709.12.4

Proposition of Law No. II:

In determining if property owned by a nonprofit religious organization qualifies for an exemption under R.C. 5709.12, a court should apply the R.C. 5709.121 definition of “used exclusively for charitable purposes” since the property owner is a charitable institution. The subject property is exempt from taxation under R.C. 5709.12 since Appellant, a charitable institution, uses the property in furtherance of Appellant’s charitable purpose and without a view for profit.11

1. Appellant, a nonprofit religious organization whose mission is to provide residential housing to low income residents who are elderly or disabled, is a charitable organization.11
2. Appellant uses the subject property in furtherance of its charitable purpose since its use of the subject property directly relates to its charitable purpose.12
3. Appellant does not use the subject property with a view for profit since it uses all revenues arising from the subject property to pay for the cost of operating and maintaining the property.13

Proposition of Law No. III:

The BTA acted unreasonably and unlawfully in requiring “corroborating evidence, in the form of documents showing ownership or costs borne by a church,” to support Appellant’s witness’ testimony that the Love Zion Church is a part owner of Appellant and sponsored the predevelopment costs and purchased the land for the subject property.14

Proposition of Law No. IV:

Even if the BTA did not have jurisdiction to apply R.C. 5709.121 in defining “exclusively used for charitable purposes” for the purpose of granting an exemption under R.C. 5709.12, the BTA erred in determining that the subject property was not exempt from taxation under R.C. 5709.12 since the property is used exclusively for charitable purposes.15

1. Using property solely as federally subsidized housing in which the U.S. Department of Housing and Urban Development imposes certain restrictions upon the use of such property is inherently charitable since the government restrictions are imposed for the general welfare.16

2. The BTA unreasonably and unlawfully relied on *Philada Home Fund v. Bd. of Tax Appeals* (1966), 5 Ohio St.2d 135, and *Cogswell Hall v. Kiinney* (1987), 30 Ohio St. 3d 43, in concluding that Appellant does not use the subject property exclusively for charitable purposes.17

3. Considering the wide range of services that Appellant provides to the tenants of the subject property, Appellant uses the property exclusively for charitable purposes.18

4. The fact that Appellant is a religious institution is relevant in determining whether the subject property is used exclusively for charitable purposes since Appellant’s religious mission provides a spiritual benefit to those involved with operating the subject property.21

5. Based on the totality of circumstances, Appellant uses the subject property exclusively for charitable purposes as required by R.C. 5709.12(B).	22
--	----

CONCLUSION	24
------------------	----

PROOF OF SERVICE	25
------------------------	----

APPENDIX

Notice of Appeal to the Ohio Supreme Court	1-4
Decision of the Board of Tax Appeals	5-17

R.C. 5701.13	18
R.C. 5709.12	21-24
R.C. 5709.121	25-26
R.C. 5711.18	27
R.C. 5717.02	28

IRC 501(c)(3).....	30
<i>Matthew 25:35-36</i> (New International Reader’s Version).....	31-33
Section 202 of the Housing Act of 1959.....	34-35

12 U.S.C. 1701q(a)(1).....	36
----------------------------	----

TABLE OF AUTHORITIES

CASES:

<i>Abex Corp. v. Kosydar</i> (1973), 35 Ohio St.2d 13, 64 O.O.2d 8, 298 N.E.2d 584.....	4
<i>Amsdell v. Cuyahoga Cty. Bd. of Revision</i> (1994), 69 Ohio St.3d 572, 635 N.E.2d 11	16
<i>Beckert v. Our Lady of Angels Apartments, Inc.</i> (C.A. 6, 1999), 192 F.3d 601	18
<i>Bethesda Healthcare, Inc. v. Wilkins</i> (2004), 101 Ohio St.3d 420, 424.....	7, 10
<i>Bethesda Healthcare, Inc. v. Wilkins</i> (2004), 101 Ohio St.3d 420, 425	17, 25
<i>Brown v. Levin</i> (2008), 119 Ohio St.3d 335	8
<i>Buckeye Internatl., Inc. v. Limbach</i> (1992), 64 Ohio St.3d 264, 268	5
<i>Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision</i> (1975), 44 Ohio St.2d 13, 73 O.O.2d 83, 336 N.E.2d 433	16
<i>Cincinnati Nature Ctr. Assn. v. Bd. of Tax Appeals</i> (1976), 48 Ohio St.2d 122, 125, 2 O.O.3d 275, 357 N.E.2d 381	12
<i>Cogswell Hall v. Kinney</i> (1987), 30 Ohio St.3d 43	19
<i>Community Health Professionals, Inc. v. Levin</i> (2007), 113 Ohio St.3d 432.....	14
<i>Cousino Constr. Co. v. Wilkins</i> (2006), 108 Ohio St.3d 90.....	8
<i>First Baptist Church of Milford v. Wilkins</i> (2006), 110 Ohio St.3d 496	17
<i>Girl Scouts-Great Trail Council v. Levin</i> (2007), 113 Ohio St.3d 24, 26.	14
<i>Goodyear Tire & Rubber Co. v. Limbach</i> (1991), 61 Ohio St.3d 381.....	4, 5
<i>Nat. Church Residences v. Lindley</i> (1985), 18 Ohio St.3d 53	20
<i>Nat. Steelworkers v. Wilkens</i> (January 20, 2009), BTA Nos. 2006-728, 729.....	22, 23
<i>Northeast Ohio Psych. Inst. v. Levin</i> (2009), 121 Ohio St.3d 292, 2009-Ohio-583.....	9, 12
<i>OCLC Online Computer Library Ctr., Inc. v. Kinney</i> (1984), 11 Ohio St.3d 198, 11 OBR 509, 446 N.E.2d 572	12
<i>Oikos Community Dev. Corp. v. Zaino</i> (Nov. 9, 2001), BTA No. 2000-T-2037,	10
<i>Philada Home Fund v. Bd. of Tax Appeals</i> (1966), 5 Ohio St.2d 135.....	1, 19
<i>Planned Parenthood Assn. v. Tax Commr.</i> (1996), 5 Ohio St.2d 117	13, 17
<i>Queen City Valves, Inc. v. Peck</i> (1954), 161 Ohio St. 579, 583, 120 N.E. 310, 312.....	5
<i>Satullo v. Wilkins</i> (2006), 111 Ohio St.3d 399	8
<i>True Christianity Evangelism v. Zaino</i> (2001), 91 Ohio St.3d 117	24
<i>v. passim</i>	
<i>Westside Mothers v. Haveman</i> (C.A. 6, 2002), 289 F.3d 852	18
<i>Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision</i> (2009), 121 Ohio St.3d 175, 2009-Ohio-763	18

CONSTITUTIONAL PROVISIONS; STATUES:

12 U.S.C. 1701q(a)(1).....16
R.C. 5701.13.....23
R.C. 5709.12..... passim
R.C. 5709.12(B).....17
R.C. 5709.121..... passim
R.C. 5711.18.....6
R.C. 5717.02..... 4, 6, 7, 11
IRC 501(c)(3)9
Section 202 of the Housing Act of 1959.....18

OTHER AUTHORITIES:

Matthew 25:35-36 (New International Reader’s Version).....24

STATEMENT OF FACTS

Appellant Property Owner, NBC-USA Housing Inc. – Five, dba Love Zion Manor, is a religious nonprofit organization jointly owned by the National Baptist Convention and the Love Zion Baptist Church. (Supp. 31, 33). The National Baptist Convention is the oldest African American religious convention. (Supp. 30). The National Baptist Convention Housing Commission, a subdivision of the National Baptist Convention, works with local churches to establish housing projects for low income residents who are either elderly or disabled. (Supp. 30). The goal of the housing projects is to provide “safe, comfortable and affordable housing that will allow men and women to live with dignity and pride.” (Supp. 35). Love Zion is a Baptist church located in Columbus, Ohio. (Supp. 29-30). Love Zion entered into a memorandum of understanding with the National Baptist Convention under which Love Zion agreed to purchase the land and pay for the development costs of the subject property. (Supp. 30). Subsequently, the National Baptist Convention and Love Zion established Appellant, a religious nonprofit organization that is exempt from federal taxation, to own, operate, and manage the subject property. (Supp. 29, 30, 33).

The subject property, commonly known as Love Zion Manor, is located at 2436 Ennis Road in the northeast quadrant of Columbus, Ohio. (Supp. 28-29). The subject property is identified in the Franklin County Auditors Records as Permanent Parcel Numbers 10-215287 and 10-146485-00. (Supp. 1). The subject property is located in an urban, inner city area. (Supp. 29). In 1990, the subject property was improved with a twenty-five (25) unit residential housing facility. (Supp. 29). All of the 25 units are one-bedroom units. (Supp. 29). The subject

property is federally subsidized through the U.S. Department of Housing and Urban Development (the "HUD"). (Supp. 33). If Appellant fails to comply with certain restrictions that the HUD imposes on the subject property, HUD can repossess the subject property. (Supp. 33).

There are twenty-six (26) residents at the subject property. (Supp. 29). In order to be eligible to reside at the subject property, a resident must meet the federal classification of very low or extremely low income. (Supp. 38). Further, residents must either be above the age of 62 or disabled. (Supp. 32). The residents of the subject property are required to pay a percentage of the rental rate based on their income and the remaining portion is subsidized by the federal government. (Supp. 35). The average annual income of the residents at the subject property ranges from \$7,000 to \$10,000. (Supp. 29).

Appellant pays for the resident's basic utilities, including electricity, water, and heat. (Supp. 29). In addition to providing subsidized housing, Appellant provides the residents with other services such as social events, blood pressure and diabetes testing, food boxes, and bible studies. (Supp. 30, 33-34, 36). Appellant provides other services as required by individual tenants such as transportation, telephones, and even simply someone to keep them company. (Supp. 30, 33-34).

On June 2, 2004, Appellant filed an Application for Real Property Exemption and Remission with the Ohio Division of Tax Equalization, claiming an exemption under R.C. 5709.12. (Supp. 1- 4). On August 8, 2004, the Tax Commissioner denied the Appellant's Application, finding that the subject property was not exclusively used for charitable purposes. (Supp. 25-26).

Appellant timely filed an appeal to the Ohio Board of Tax Appeals (hereinafter the BTA) on October 5, 2006. (Supp. 22-24). In its Notice of Appeal, Appellant, among other claims, complained that the “[t]he Final Determination of the Tax Commissioner unlawfully denied the Taxpayer’s request for an exemption under Ohio Revised Code § 5709.12 since the subject property is used exclusively for charitable purposes.” (Supp. 22). At the August 30, 2007 BTA hearing, Appellant presented the testimony of Michaele L. Tarver, the manager of the subject property. (Supp. 27-47). As the manager of the subject property, Ms. Tarver is responsible for managing the housing facility. (Supp. 28-29). Ms. Tarver is also responsible for providing any service that residents of the subject property may require. (Supp. 29). In addition to the services that Appellant directly provides to the tenants, Ms. Tarver often connects residents with community resources, local churches, and other organization who can offer assistance to the residents. (Supp. 29-30, 36).

Ms. Tarver also testified that Appellant does not operate the subject property with a view of making a profit on the subject property. (Supp. 31). All money arising from the subject property or the federal subsidies is used in furtherance of Appellant’s goal to provide a safe and sanitary place for their residents to live. (Supp. 31). Although the subject property is relatively able to financially sustain itself, the subject property has a very low budget. (Supp. 31). Moreover, the cost of maintaining the subject property has increased as the property gets older. (Supp. 31).

All the proceeds arising from the subject property and the federal subsidies are used to help the residents and maintain the property. (Supp. 31). Specifically, Appellant uses rental money to pay all of the subject property’s utility expenses such as gas, electric, water, and trash,

(Supp. 31). Rental money is also used to pay for all the maintenance and repair costs for the subject property. (Supp. 31). Ms. Tarver further testified that the rental money is used to provide services to the residents. (Supp. 31). For example, the subject property employs a full-time service coordinator for the purpose of meeting the residents' non-housing needs, such as medical assistance. (Supp. 33).

On April 21, 2009, the BTA rendered its decision. (Appx. 5-17). The BTA affirmed the decision of the tax commissioner, unreasonably and unlawfully failing to find the subject property exempt from taxation under R.C. 5709.12. (Appx. 17). As the BTA's decision was unreasonable and unlawful, Appellant appealed the BTA's decision to the Ohio Supreme Court. (Appx. 1-4). Appellant timely filed the Notice of Appeal on May 19, 2009. (Appx. 1-4).

LAW AND ARGUMENT

Proposition of Law No. I:

The BTA unreasonably and unlawfully concluded that it did not have jurisdiction to apply R.C. 5709.121 when the application of R.C. 5709.121 is a permissible alternative argument that sufficiently relates to Appellants claim that the Tax Commissioner unreasonably and unlawfully denied Appellant an exemption under R.C. 5709.12.

For the BTA to have jurisdiction over an alleged error, a taxpayer must specify the error in its notice of appeal to the BTA. R.C. 5717.02. In order to meet the specificity requirement under R.C. 5717.02, a taxpayer must specify the contested actions and findings of the Tax Commissioner and articulate the basis for the asserted error. *Goodyear Tire & Rubber Co. v. Limbach* (1991), 61 Ohio St.3d 381, 383, citing *Abex Corp. v. Kosydar* (1973), 35 Ohio St.2d 13, 64 O.O.2d 8, 298 N.E.2d 584. A taxpayer will not meet the specificity requirement if its contested issues are so broad that they may be "advanced in nearly any case and are not of a

nature to call the attention of the board to those precise determinations of the Tax Commissioner with which appellant took issue.” *Queen City Valves, Inc. v. Peck* (1954), 161 Ohio St. 579, 583, 120 N.E. 310, 312. Although a taxpayer must specify the contested actions and findings of the Tax Commissioner and articulate the basis for that error, the court should not deny a review by a hypertechnical reading of the notice. *Abex Corp., supra.*

The Supreme Court of Ohio has consistently allowed appellants to raise alternative arguments on appeal if the appellant “specified the commissioner’s action that it questioned, cited the statute under which it objected, and asserted the treatment it believed the commissioner should have applied.” *Buckeye Internatl., Inc. v. Limbach* (1992), 64 Ohio St.3d 264, 268, quoting *Goodyear Tire & Rubber Co., supra.* In *Goodyear Tire & Rubber Co.*, the appellant taxpayer entered into a sale and leaseback agreement with American Motors Company, allowing Goodyear to claim federal income tax deductions for the depreciation of certain equipment. *Goodyear Tire & Rubber Co. v. Limbach* (1991), 61 Ohio St.3d 381. For its Ohio franchise tax returns, Goodyear deducted a portion of the federal tax benefits from its net income. *Id.* at 382. The Tax Commissioner disallowed such treatment, finding that “these deductions resulted from the lease of tangible personal property located outside the state.” *Id.* In its notice of appeal to the BTA, Goodyear argued that the income should be apportioned since the property was not situated in Ohio. Alternatively, Goodyear argued that only net income is allocable, not net losses. *Id.* The BTA rejected both of Goodyear’s arguments. *Id.* On appeal to this court, Goodyear raised an additional argument that the deductions resulted from the lease of intangible property, and therefore, should be apportioned. *Id.* This court allowed Goodyear to raise the alternative argument since Goodyear specified the action of the Commissioner that it contested, cited the

statute under which it objected, and asserted the treatment it believed the Commissioner should have applied to the income. *Id.* at 383.

In *Buckeye Internatl., Inc.*, the taxpayer contested in its notice of appeal that the Tax Commissioner failed to follow the general requirements of R.C. 5711.18, which governs the valuation of accounts and personal property. *Buckeye Internatl., Inc.*, 64 Ohio St.3d 264, 265. Although the taxpayer later argued that “the auditor double counted personal property additions and included exempt property as a part of the excess amount allocated to personal property,” the BTA entirely ignored this argument. *Id.* The Supreme Court of Ohio held that the double counting issue sufficiently related to the valuation of property mentioned in the notice of appeal so as to meet the specificity requirements of R.C. 5717.02. *Id.* at 268.

In its notice of appeal, Appellant specified that “[t]he Final Determination of the Tax Commissioner unlawfully denied the Taxpayer’s request for an exemption under Ohio Revised Code § 5709.12 since the subject property is used exclusively for charitable purposes.” (Supp. 31). Appellant later argued in its brief to the BTA that because Appellant is a nonprofit charitable organization, the BTA should apply the definition of “used exclusively for charitable purposes” that is provided in R.C. 5709.121. In its decision, the BTA concluded that it did not have jurisdiction to apply R.C. 5709.121 due to the fact that “appellant only sought an exemption under R.C. 5709.12, and did not specify R.C. 5709.121 in its notice of appeal or in its application for exemption.” (Appx. 9).

R.C. 5709.121 is not an independent exemption, but rather it defines “used exclusively for charitable purposes” as provided for in R.C. 5709.12. *Bethesda Healthcare, Inc. v. Wilkins* (2004), 101 Ohio St.3d 420, 424. As Appellant’s argument under R.C. 5709.121 falls within the

scope of its asserted error contesting the Tax Commissioner's determination that it did not qualify for an exemption under R.C. 5709.12, Appellant raised a permissible alternative argument that sufficiently relates to its original claim. Further, Appellant's alternative argument also meets the three requirements that this court set forth in *Goodyear Tire & Rubber Co.* First, by clearly contesting the Tax Commissioner's determination that the subject property was not used exclusively for charitable purposes, Appellant specified the action of the commissioner that it contested. Appellant also indicated R.C. 5709.12 as the statute under which it objected. Although Appellant argues that the Tax Commissioner failed to consider the definition of "used exclusively for charitable purposes" that is provided in R.C. 5709.121, Appellant still objects to the Tax Commissioner's overall denial of an exemption under R.C. 5709.12. Lastly, Appellant asserted the treatment it believed the Commissioner should have applied to the property: the property is exempt from taxation under R.C. 5709.12 since it is used exclusively for charitable purposes.

This case is distinguishable from the cases in which this court held that the BTA lacked jurisdiction to hear an issue under R.C. 5717.02. This court has held there was no jurisdiction to hear an issue when the asserted error is so broad that it can be set out in nearly any case and does not call the attention of the Board to the precise determinations of the commissioner that the taxpayer took issue with. *Queen City Valves, Inc. v. Peck* (1954), 161 Ohio St. 579 (finding that the BTA did not have jurisdiction to hear an issue related to personal property tax when the taxpayer's notice of appeal only asserted general errors that could be set out in nearly any case); *Brown v. Levin* (2008), 119 Ohio St.3d 335 (finding that the BTA lacked jurisdiction to hear an issued related to an electing small business trust when the taxpayer's notice of appeal only

specified the general statute that imposes Ohio personal income tax). In this case, Appellant's asserted error is sufficiently specific. Appellant pinpointed the precise determinations of the Commissioner that it took issue with by indicating R.C. 5709.12 as the applicable statute and contesting the Commissioner's determination that the property was not "used exclusively for charitable purposes."

This court has also found that the BTA lacked jurisdiction to hear an issue when the taxpayer failed to cite the applicable statute in its notice of appeal. *Satullo v. Wilkins* (2006), 111 Ohio St.3d 399 (finding that the BTA lacked jurisdiction to hear a claim that the taxpayer was not a consumer subject to Ohio's use tax because the taxpayer failed to cite either the statute that imposes use tax on consumers or the statute defining consumers); *Cousino Constr. Co. v. Wilkins* (2006), 108 Ohio St.3d 90 (finding that the BTA lacked jurisdiction to hear an construction-related sales exemption issue when the Tax Commissioner explicitly rejected the taxpayer's request for an exemption and the taxpayer failed to contest the Commissioner's finding in its notice of appeal or the brief it submitted to the BTA). As discussed above, Applicant accurately cited R.C. 5709.12 as the applicable statute.

The BTA cited *Northeast Ohio Psych. Inst. v. Levin* (2009), 121 Ohio St.3d 292, 2009-Ohio-583, to support its conclusion that it lacked jurisdiction to apply the R.C. 5709.121 definition of "used exclusively for charitable purposes." (Appx. 9). In *Northeast Ohio Psych. Inst.*, the taxpayer appealed from the Tax Commissioner's determination that it did not qualify for an exemption under R.C. 5709.12 and R.C. 5709.121. *Id.* In its brief to the BTA, the taxpayer raised the additional argument that, as an IRC 501(c)(3) corporation, it was presumptively a charitable institution. *Id.* at 295. The Supreme Court of Ohio noted that the taxpayer's failure to

assert its IRC 501(c)(3) argument was “striking in light of the Tax Commissioner’s explicit statement that ‘[a]lthough organized as a IRC 501(c)(3) corporation there is no evidence in the record that the entity is a charitable entity.’” *Id.* at 295. By failing to contest the Commissioner’s assertion that there was no evidence suggesting it was a charitable entity, the taxpayer was precluded from later arguing that its IRC 501(c)(3) status was in itself sufficient evidence to prove it was a charitable entity. *Id.* In contrast to *Northeast Ohio Psych. Inst.*, the Tax Commissioner never made a final determination of whether Appellant was a charitable institution or whether Appellant met the definition of “used exclusively for charitable purposes” that is provided for in R.C. 5709.121. (Supp. 25-26). In fact, the tax commissioner’s final determination stated: “even though the applicant *may be a charitable institution*, the property is not exclusively used for charitable purposes.” (Supp. 25) (emphasis added). As Appellant sufficiently specified the action of the Commissioner that it contested, the BTA had jurisdiction to hear its additional arguments on the application of R.C. 5709.121.

The BTA also cited *Oikos Community Dev. Corp. v. Zaino* (Nov. 9, 2001), BTA No. 2000-T-2037, for the proposition that it can only consider R.C. 5709.12 in determining if Appellant qualified for the exemption. (Appx. 9). In *Oikos Community Dev. Corp.*, the BTA determined that it lacked jurisdiction to apply R.C. 5709.121 when the taxpayer failed to mention R.C. 5709.121 in its notice of appeal. Initially it should be noted that, as a BTA case, *Oikos Community Dev. Corp.* has very little authoritative value. Further, in *Oikos Community Dev. Corp.*, the BTA misinterpreted the purpose of R.C. 5709.121, noting “the Commissioner objects to our consideration of an exemption under R.C. 5709.121...” *Oikos Community Dev. Corp. v. Zaino* (Nov. 9, 2001), BTA No. 2000-T-2037. As discussed above, R.C. 5709.121 is not an

independent exemption, but rather only defines “used exclusively for charitable purposes” under R.C. 5709.12. *Bethesda Healthcare, Inc. v. Wilkins* (2004), 101 Ohio St.3d 420, 424. Also, in its application for exemption, the taxpayer in *Oikos Community Dev. Corp.* left blank the question asking, “under what section(s) of the Ohio Revised code is an exemption sought.” *Oikos Community Dev. Corp. v. Zaino* (Nov. 9, 2001), BTA No. 2000-T-2037. It also failed to recognize itself as a charitable institution. *Id.* Accordingly, in contrast to the case at bar, the taxpayer in *Oikos Community Dev. Corp.* failed to specify the action of the Commissioner that it questioned and the statute under which it objected. As discussed above, Appellant correctly asserted in its application that it sought an exemption under R.C. 5709.12. (Supp. 2). Moreover, Appellant had no reason to contest the Tax Commissioner’s determination that it was not a charitable institution since the Tax Commissioner never made such a determination: “even though the applicant *may be a charitable institution*, the property is not used exclusively for charitable purposes.” (Supp. 25) (emphasis added).

In conclusion, the BTA unreasonably and unlawfully held that it lacked jurisdiction to apply R.C. 5709.121 in determining whether the subject property was “used exclusively for charitable purposes” under R.C. 5709.12. Appellant undoubtedly met the specification requirements of R.C. 5717.02 by specifically contesting, “[t]he Final Determination of the Tax Commissioner unlawfully denied the Taxpayer’s request for an exemption under Ohio Revised Code § 5709.12 since the subject property is used exclusively for charitable purposes.” (Supp. 31). By finding that it lacked jurisdiction to apply RC 5709.121, the BTA denied Appellant review by a hypertechnical reading of Appellant’s notice of appeal.

Proposition of Law No. II:

In determining if property owned by a nonprofit religious organization qualifies for an exemption under R.C. 5709.12, a court should apply the R.C. 5709.121 definition of “used exclusively for charitable purposes” since the property owner is a charitable institution. The subject property is exempt from taxation under R.C. 5709.12 since Appellant, a charitable institution, uses the property in furtherance of Appellant’s charitable purpose and without a view for profit.

R.C. 5709.12 provides that “[r]eal and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.” Real property and tangible personal property belonging to a charitable institution shall be considered as used exclusively for charitable purposes by such institution if the property is made available under the direction or control of such institution for use in furtherance of or incidental to its charitable purpose and not with the view to profit. R.C. 5709.121 (A)(2). Accordingly, to meet the definition of “used exclusively for charitable purposes” under 5709.121, real property must: (1) be under the direction or control of a charitable organization; (2) be otherwise available for use in furtherance of or incidental to the institution’s charitable or public purpose; and (3) not be available with a view for profit. *Cincinnati Nature Ctr. Assn. v. Bd. of Tax Appeals* (1976), 48 Ohio St.2d 122, 125, 2 O.O.3d 275, 357 N.E.2d 381.

- 1. Appellant, a nonprofit religious organization whose mission is to provide residential housing to low income residents who are elderly or disabled, is a charitable organization.**

Appellant is a nonprofit religious organization that is exempt from federal taxation. (Supp. 2). As the BTA correctly determined that Appellant is an institution, the next issue is whether the Appellant is charitable. (Appx. 10-12). To determine if an institution is charitable for the purpose of R.C. 5709.121, courts look to the “charitable activities of the taxpayer seeking

the exemption, not the charitable nature of the institutional customers.” *Northeast Ohio Psych. Inst. v. Levin* (2009), 121 Ohio St.3d 292, 2009-Ohio-583; quoting *OCLC Online Computer Library Ctr., Inc. v. Kinney* (1984), 11 Ohio St.3d 198, 11 OBR 509, 446 N.E.2d 572. This court has defined charity as “the attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance mankind in general, or those in need of advancement in benefit in particular, without regard to their ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity.” *Planned Parenthood Assn. v. Tax Commr.* (1996), 5 Ohio St.2d 117. By providing residential housing and other services to low income residents who are either elderly or disabled, appellants provide economic, social, and spiritual benefits to the residents of the subject property. As all of the tenants of the subject property are low income, the subsidized housing and all of the services that Appellant provides economically benefit the residents. Also, the services that Appellant offers, such as arranging social activities, provide a social benefit to the residents. (Supp. 30, 33-34, 36). Further, the bible studies that Appellant provides spiritually benefits the residents. (Supp. 30). Appellant not only provides benefits to its residents, but Appellant also provides its members with a spiritual benefit. Appellant is a religious organization whose mission is premised upon the Christian virtue of helping the poor. (Supp. 30-31). Appellant provides a spiritual benefit to its members by providing them with a venue to engage in charitable work in furtherance of their Christian beliefs. Accordingly, Appellant is undoubtedly a charitable organization.

- 2. Appellant uses the subject property in furtherance of its charitable purpose since its use of the subject property directly relates to its charitable purpose.**

In determining whether property is used in furtherance of or incidental to an institution's charitable purpose, the focus is on the relationship between the actual use of the property and the purpose of the institution. *Community Health Professionals, Inc. v. Levin* (2007), 113 Ohio St.3d 432. As mentioned above, the Appellant's charitable purpose is to provide housing to low income residents who are either elderly or disabled so that they have a safe, sanitary, and decent place to live. (Supp. 2, 32). The subject property is "used solely as a residence for elderly and handicapped families that are low income." (Supp. 2). Accordingly, the subject property is undoubtedly used in furtherance of Appellant's charitable purpose.

3. Appellant does not use the subject property with a view for profit since it uses all revenues arising from the subject property to pay for the cost of operating and maintaining the property.

Although Appellant receives some revenues from federal subsidies and the tenants' rental payments, it does not use the subject property with a view for profit. (Supp. 31). An institution may generate revenues from its use of property and still be found to have not used the property with a view for profit. *Girl Scouts-Great Trail Council v. Levin* (2007), 113 Ohio St.3d 24, 26. Moreover, the amount of profit that an institution realizes is not a determinative factor in determining whether the institution uses property with a view for profit. *Id.* In *Girl Scouts-Great Trail Council*, this court found that a store operated by the Girl Scouts that sells items reflecting membership in the Girl Scouts was not operated with a view for profit although the store earned a \$2,363 profit in one out of twelve years it was in operation. This court reasoned that "the store operated by the Girl Scouts exists to accommodate the Girl Scouts, the prices charged are intended to cover its cost of operation, and the merchandise is not marketed to compete with

commercial, forprofit enterprises.” *Id.* Similar to *Girl Scouts-Great Trail Council*, all revenues that Appellant receives are used to cover the cost of operating the subject property and to provide services to the residents. (Supp. 31). Moreover, as the cost of operating the subject property is gradually increasing, Appellant has doubt as to whether the revenues it receives will be sufficient to cover the operational costs in the future. (Supp. 31). Appellant does not operate the subject property with a view for profit, but rather operates the subject property to provide low income residents who are either elderly or disabled with a safe, sanitary, and decent place to live. (Supp. 2, 32).

In conclusion, Appellant is a charitable organization, it uses the subject property in furtherance of its charitable purpose, and it does not operate the subject property with a view for profit. Accordingly, the subject property is exempt from taxation under R.C. 5709.12 as incorporating the definition of “used exclusively for charitable purposes” that is provided for in R.C. 5709.121.

Proposition of Law No. III:

The BTA acted unreasonably and unlawfully in requiring “corroborating evidence, in the form of documents showing ownership or costs borne by a church,” to support Appellant’s witness’ testimony that the Love Zion Church is a part owner of Appellant and sponsored the predevelopment costs and purchased the land for the subject property.

At the BTA hearing, Michelle Tarver testified that the Love Zion Church is a part owner of Appellant. (Supp. 33). She further testified that the Church sponsored the predevelopment costs and purchased the land for the subject property. (Supp. 29-30). Although no other evidence was presented to refute Ms. Tarver’s testimony, the BTA unreasonably and unlawfully refused to accept the testimony. Instead, the BTA

unreasonably and unlawfully determined that the testimony could not be accepted as true without “corroborating evidence, in the form of documents showing ownership or costs borne by a church.” (Appx. 15). The Board of Tax Appeals has wide discretion in determining the weight to be given to evidence and the credibility of witnesses. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13, 73 O.O.2d 83, 336 N.E.2d 433. However, the BTA cannot simply reject competent testimony, but rather it has a duty to evaluate and criticize the testimony. *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572, 635 N.E.2d 11. In this case, the BTA refused to accept Ms. Tarver’s testimony without providing any reason as to why her statements lack credibility. Moreover, the BTA accepted Ms. Tarver’s testimony with respect to a wide range of facts, and only refused to accept her testimony that related to the Love Zion Church’s involvement with the subject property. The BTA abused its discretion when it refused to accept Ms. Tarver’s testimony without “corroborating evidence, in the form of documents showing ownership or costs borne by a church.”

Proposition of Law No. IV:

Even if the BTA did not have jurisdiction to apply R.C. 5709.121 in defining “exclusively used for charitable purposes” for the purpose of granting an exemption under R.C. 5709.12, the BTA erred in determining that the subject property was not exempt from taxation under R.C. 5709.12 since the property is used exclusively for charitable purposes.

R.C. 5709.12(B) provides, “Real *** property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation***.” As the BTA correctly determined that Appellant is an institution, the only issue for this court is whether the subject property is used exclusively for charitable purposes. This court has defined charity as “the

attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance mankind in general, or those in need of advancement in benefit in particular, without regard to their ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity.” *Planned Parenthood Assn. v. Tax Commr.* (1996), 5 Ohio St.2d 117. “Whether an institution renders sufficient services to people who are unable to afford them to be considered as making charitable use of property must be determined on the totality of circumstances ***.” *Bethesda Healthcare, Inc. v. Wilkins* (2004), 101 Ohio St.3d 420, 425. For the purposes of R.C. 5709.12(B), property is used exclusively for charitable purposes if the principal use of the property is charitable. *First Baptist Church of Milford v. Wilkins* (2006), 110 Ohio St.3d 496.

- 1. Using property solely as federally subsidized housing in which the U.S. Department of Housing and Urban Development imposes certain restrictions upon the use of such property is inherently charitable since the government restrictions are imposed for the general welfare.**

Appellant uses the subject property solely for federally subsidized housing, and the U.S. Department of Housing and Urban Development (the “HUD”) financed the construction of the subject property. (Supp. 33). If Appellant fails to comply with certain restrictions that the HUD imposes on the property, HUD can repossess the property. (Supp. 33). “[U]nlike normal contractual undertakings, federal grant programs originate in and remain governed by statutory provisions expressing the judgment of Congress concerning desirable public policy.” *Wood Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision* (2009), 121 Ohio St.3d 175, 2009-Ohio-763; quoting *Westside Mothers v. Haveman* (C.A. 6, 2002), 289 F.3d 852. In *Wood Ivy Glen Ltd. Partnership*, this court recently reasoned that use restrictions imposed on federal low

income housing tax credit properties are governmental limitations imposed for the general welfare. *Wood Ivy Glen Ltd. Partnership* at ¶ 25. Appellant received a federal loan on the property pursuant to Section 202 of the Housing Act of 1959. “Section 202 is a funding mechanism, the express purpose of which is to assist sponsors ‘to provide housing and related facilities for elderly or handicapped families.’” *Beckert v. Our Lady of Angels Apartments, Inc.* (C.A. 6, 1999), 192 F.3d 601; quoting 12 U.S.C. § 1701q(a)(1) (1991) (amended 1992) (emphasis added).¹ Appellant’s use of the subject property is inherently charitable since it coincides with Congress’s expressed public policy goals.

- 2. The BTA unreasonably and unlawfully relied on *Philada Home Fund v. Bd. of Tax Appeals* (1966), 5 Ohio St.2d 135, and *Cogswell Hall v. Kinney* (1987), 30 Ohio St.3d 43, in concluding that Appellant does not use the subject property exclusively for charitable purposes.**

The BTA took the position that the primary use of the subject property is to provide residential housing; and therefore, it is not used exclusively for charitable purposes. (Appx. 17). The BTA unreasonably and unlawfully relied on *Philada Home Fund v. Bd. of Tax Appeals* (1966), 5 Ohio St.2d 135, and *Cogswell Hall v. Kinney* (1987), 30 Ohio St.3d 43, in concluding that Appellant does not use the subject property exclusively for charitable purposes. Appellant’s use of the subject property is factually distinguishable from those at issue in *Philada Home Fund* and *Cogswell Hall*. Significantly, Appellant provides a wide range of services to the tenants of the subject property. (Supp. 30, 33-34, 36). Moreover, Appellant operates the subject property as part of its religious mission to help the needy and the community in general. (Supp. 31).

¹ In 1992, an amendment to 12 U.S.C. 1701q(a)(1) eliminated the word “handicapped” due to the passage of a separate law that governed federal subsidies for housing for handicapped individuals. However, when Appellant established the subject property, Section 202 governed housing for both elderly or handicapped tenants.

Therefore, Appellant's use of the property not only provides a benefit to the tenants, but it also provides a spiritual benefit to all those who help operate the subject property.

In *Philada Home Fund*, the taxpayer owned and operated a home for the aged and needy. The property was rented out at fixed rates and a fund was used to subsidize the rent for tenants who were unable to pay the full amount. *Philada Home Fund*, 5 Ohio St.2d 135. Apart from housing, no other services were provided to the tenants. *Id.* This court held that the property was not used exclusively for charitable purposes as required by R.C. 5709.12. *Id.* In *Cogswell Hall*, this court upheld their decision in *Philada Home Fund* by denying an exemption for property operated as a home for women.

This case differs from *Philada Home Fund* and *Cogswell Hall* in two respects: 1. many other services are provided to the tenants of the subject property; and 2. Appellant operates the property as part of a religious mission to help the needy thereby providing a spiritual benefit to those who assist with the operation of the property.

3. Considering the wide range of services that Appellant provides to the tenants of the subject property, Appellant uses the property exclusively for charitable purposes.

"Whether an institution renders sufficient services to people who are unable to afford them to be considered as making charitable use of property must be determined on the totality of circumstances ***." *Bethesda Healthcare, Inc. v. Wilkins*, (2004), 101 Ohio St.3d 420, 425. In contrast to *Philada Home Fund* and *Cogswell Hall*, Appellant provides the tenants of the subject property with a plethora of services. Appellant not only assists the tenants with obtaining services from other community organizations, but also directly provides the tenants with other services, including bible studies, diabetes and blood pressure checks, and even simply someone

to talk with. (Supp. 30, 33-34, 36). These services help ensure the residents can “live with dignity and pride.” (Supp. 35). The BTA relied on *Nat. Church Residences v. Lindley* (1985), 18 Ohio St.3d 53, in finding that the services offered by Appellant are vicarious in nature and the primary purpose of the subject property is for residential housing. (Appx. 14-16). In *Nat. Church Residences*, the taxpayer operated a home for people who were elderly or disabled. Although some tenants could receive HUD subsidies, residency was not restricted to low income individuals. *Id.* The taxpayer also arranged for various community organizations such as Meals on Wheels to provide services to their tenants. *Id.* This court reasoned that “any charitable activities which occurred in the case at bar were provided by volunteer agents or benevolent organizations, and not by appellant who simply contacted these persons or organizations for the purpose of having them provide services for their residents. In the final analysis, appellants are attempting to obtain a vicarious charitable exemption...” *Id.* at 58.

Similar to *Nat. Church Residences*, Appellant arranges for various community organizations to provide services to its tenants. (Supp. 30). However, Appellant also directly provides the tenants with many other services. (Supp. 30, 33-34, 36). For instance, Appellant provides occasional meals, social activities, informational programs on health issues, bible studies, and diabetes and blood pressure checks. (Supp. 30, 33-34, 36). Moreover, Appellant provides additional services depending on the needs of each tenant. (Supp. 30). In contrast to *Nat. Church Residences*, Appellant does not simply act as a middle man, connecting its residents to other charitable organizations. Considering the wide range of charitable services that Appellant provides to its tenants, it cannot be concluded that Appellant is “attempting to obtain a vicarious charitable exemption.”

The BTA also relied on *Nat. Steelworkers v. Wilkens* (January 20, 2009), BTA Nos. 2006-728, 729, unreported, appeals pending, in concluding that the services that Appellant offers are vicariously charitable in nature. (Appx. 14-16). While this court is not bound by the decision in *Nat. Steelworkers* and the case is still pending on appeal, the facts of that case are still distinguishable from the case at bar. In *Nat. Steelworkers*, the taxpayer sought an exemption under R.C. 5709.12(B) for property that was used primarily as a center for elderly individuals, although some disabled tenants were not elderly. A nonprofit organization, the Elderly Housing Development and Operations Corporation (“EHDOC”), arranged the financing for the construction of the subject property and oversaw the operations of the property. *Id.* EHDOC’s mission is to “build, develop and manage quality service housing with support services in place to keep people aging in place as long as possible.” *Id.* A service coordinator offered the residents support services through other organizations such as Meals-on-Wheels. *Id.* The service coordinator also “assisted tenants with personal finance issues, personal hygiene, apartment maintenance, and arranging social activities.” *Id.*

Based on EHDOC’s mission statement, the primary purpose of the property in *Nat. Steelworkers* was to serve as a “home for the aged,” although a few disabled residents were not elderly. *Id.* By contrast, Appellant is not attempting to establish a “home for the aged.” In fact, the National Baptist Convention Housing Commission intentionally does not want to limit its services to elderly residents, but “is committed to providing safe, comfortable and affordable housing that will allow men and women to live with dignity and pride, in a place they can proudly call home.” (Supp. 35). In *Nat. Steelworkers*, the BTA correctly asserted, “[a]fter the General assembly has marked specific use of property for exemption and has established criteria

therefor [sic], the function of the judicial branch is limited to interpreting and applying those criteria. *** [T]o qualify its property for exemption from taxation, an institution which characterizes itself as a public charity, but whose purpose is to provide a ‘home for the aged,’ must meet the criteria therefor [sic] adopted by the General Assembly.” *Nat. Steelworkers v. Wilkens* (January 20, 2009), BTA Nos. 2006-728, 729, unreported, appeals pending. However, the General Assembly never adopted a specific exemption that governs Appellant’s actual and intended use of the subject property. In contrast to *Nat. Steelworkers*, granting Appellant an exemption under R.C. 5709.12 will not negate the purpose of R.C. 5701.13, which establishes an exemption for homes for the aged. Accordingly, considering that Appellant never used or intended to use the subject property as a “home for the aged,” the factors set forth in R.C. 5701.13 have no effect in determining if the Appellant’s use of the subject property qualifies for an exemption.

As Appellant is not limited to the criteria set forth in R.C. 5701.13, considering the totality of the services that Appellant offers to its tenants, Appellant undoubtedly uses the subject property “exclusively for charitable purposes” as required by R.C. 5709.12.

4. The fact that Appellant is a religious institution is relevant in determining whether the subject property is used exclusively for charitable purposes since Appellant’s religious mission provides a spiritual benefit to those involved with operating the subject property.

The BTA refused to give any weight to the fact that Appellant is a religious institution, noting “that it is the owner’s use that is in issue as it relates to an exemption under R.C. 5709.12(B).” (Appx. 15). Although the BTA was correct in asserting that the owner’s use is at issue when determining if property is used exclusively for charitable purposes under R.C.

5709.12(B), the BTA failed to analyze how Appellant's religious mission affects its use of the subject property. Appellant operates the property under its religious mission to help the less fortunate. (Supp. 30-31). This religious mission is premised upon an interpretation of the New Testament passage, "I was hungry. And you gave me something to eat. I was thirsty. And you gave me something to drink. I was a stranger. And you invited me in. I needed clothes. And you gave them to me. I was sick. And you took care of me. I was in prison. And you came to visit me." *Matthew 25:35-36* (New International Reader's Version). Appellant and many other Baptist organizations have interpreted this passage as imposing a duty upon Christians to help those in need. (Supp. 30). Although the subject property is open to tenants of all religions, the individuals involved in operating the subject property are all Baptists. (Supp. 29-31). These individuals volunteer by adopting residents, providing them with a variety of services or even just someone to talk with. (Supp. 30). They also provide a bible study, giving those involved with the operation of the subject property an opportunity to help spread their Christian beliefs. (Supp. 30). This evangelistic use of the subject property is undoubtedly a charitable one. *See True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117. Accordingly, Appellant's use of the subject property not only provides many benefits to its tenants, but it also provides significant spiritual benefits to those involved with the operation of the property by providing them with a venue where they can spread the message of the Bible and pursue their religious mission to help the needy.

5. Based on the totality of circumstances, Appellant uses the subject property exclusively for charitable purposes as required by R.C. 5709.12(B).

“Whether an institution renders sufficient services to people who are unable to afford them to be considered as making charitable use of property must be determined on the totality of circumstances ***.” *Bethesda Healthcare, Inc. v. Wilkins* (2004), 101 Ohio St.3d 420, 425. Appellant uses the subject property to provide residential housing to low income tenants who are either elderly or disabled in order to “allow men and women to live with dignity and pride, in a place they can proudly call home.” (Supp. 35, 38). Unlike many other subsidized housing facilities, Appellant directly provides its tenants with a wide range of services, including health services, bible studies, social activities, and occasional meals. (Supp. 30, 33-34, 36). Appellant also coordinates local organizations to provide services to the tenants. (Supp. 30). Moreover, Appellant’s use of the property spiritually benefits those who help operate the property by providing them with a venue where they can spread the message of the Bible and pursue their religious mission to help the less fortunate. (Supp. 31). Based on the totality of the circumstances, Appellant does far more than provide residential housing, but rather it uses the subject property to provide substantial benefits to two distinct groups of people. Accordingly, Appellant uses the property exclusively for charitable purposes as required by R.C. 5709.12(B).

CONCLUSION

For the reasons set forth in Propositions of Law Nos. I through IV, Appellant respectfully requests the Supreme Court of Ohio to reverse the unlawful and unreasonable decision of the Board of Tax Appeals and remand the matter for issuance of an Order approving Appellant's application for real property exemption for tax year 2004. Appellant further requests remand so that the Board may approve Appellant's request for the remission of taxes and interest for tax years 2001, 2002, and 2003.

Respectfully submitted,

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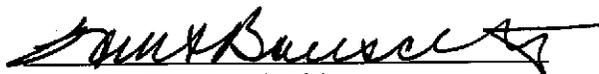
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IN THE SUPREME COURT OF OHIO

09-0919

NBC-USA HOUSING, INC.-FIVE,
D/B/A/ LOVE ZION MANOR,

Appellant,

v.

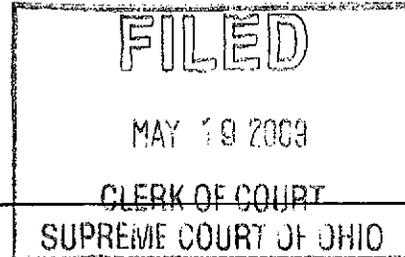
RICHARD A. LEVIN, TAX
COMMISSIONER OF OHIO,
BOARD OF EDUCATION OF THE
COLUMBUS CITY SCHOOL DISTRICT
AND FRANKLIN COUNTY AUDITOR

Appellees.

CASE NO. _____

Appeal from the Ohio
Board of Tax Appeals

Board of Tax Appeals
Case No. 2006-N-1492



NOTICE OF APPEAL

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Notice of Appeal

Appellant, NBC-USA Housing, Inc.-Five, d/b/a/ Love Zion Manor, hereby 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 (the "Board"), journalized in Case No. 2006-N-1492 on April 21, 2009. A true copy of the Decision and Order of the Board being appealed is attached hereto as Exhibit A and incorporated herein by reference.

Appellant complains of the following errors in the Decision and Order of the Board:

- 1) The Board acted unreasonably and unlawfully in concluding that Appellant did not seek exemption under R.C. 5709.121.
- 2) The Board acted unreasonably and unlawfully in finding that Appellant does not use the subject property exclusively for charitable purposes under R.C. §5709.12(B) or §5709.121.
- 3) The Board acted unreasonably and unlawfully in concluding Appellant was not making exclusive charitable use of the subject property given that Appellant is a non-profit organization classified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code.
- 4) The Board acted unreasonably and unlawfully in holding that Appellant's use of the property is not charitable given the Supreme Court of Ohio's recent decision in *Woda Ivy Glen Ltd. Partnership v. Fayette County Bd. of Rev.*, 121 Ohio St.3d 175 (2009) (stating legislation governing federally subsidized housing is "plainly" for the "general welfare" (and, thus, charitable in nature)).
- 5) The Board acted unreasonably and unlawfully in failing to find that Appellant is a religious institution.
- 6) The Board acted unreasonably and unlawfully in concluding Appellant's use is not charitable under the definition espoused in *Planned Parenthood Ass'n of Columbus, Inc. v. Tax Comm'r*, 5 Ohio St.2d 117 (1966).
- 8) The Board acted unreasonably and unlawfully in failing to consider whether Applicant's use is charitable based on the totality of the circumstances.
- 9) The Board acted unreasonably and unlawfully in discounting evidence of the many services that, in addition to affordable housing, are offered at the subject property.

- 10) The Board acted unreasonably and unlawfully in finding the additional services offered to residents of the subject property are merely “vicariously charitable.”
- 11) The Board acted unreasonably and unlawfully in requiring “corroborating evidence, in the form of documents showing ownership or costs borne by a church” to support Appellant’s witness’ testimony that the subject property is funded by a sponsoring church.
- 12) The Board acted unreasonably and unlawfully in finding that the services offered to residents are not integral requirements for all residents as a condition for admission.
- 13) The Board’s decision is against the manifest weight of the evidence.

Appellant requests that the Court reverse the unreasonable and unlawful decision of the Board and remand the matter for issuance of an Order approving Appellant’s application for real property exemption for tax year 2004. Appellant further requests remand so that the Board may approve Appellant’s request for the remission of taxes and interest for tax years 2001, 2002, and 2003.

Respectfully submitted,



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OHIO BOARD OF TAX APPEALS

NBC-USA Housing, Inc.-Five)	
(dba) Love Zion Manor,)	
)	CASE NO. 2006-N-1492
Appellant,)	
)	(REAL PROPERTY TAX EXEMPTION)
vs.)	
)	DECISION AND ORDER
William W. Wilkins, Tax)	
Commissioner of Ohio, and)	
Board of Education of the)	
Columbus City School)	
District,)	
)	
Appellees.)	

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Entered

APR 21 2009

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

On October 5, 2006, appellant, NBC-USA Housing, Inc.-Five (dba) Love Zion Manor, filed an appeal from a final determination of the Tax Commissioner, in which the commissioner denied appellant's application for real property exemption for

tax year 2004. The commissioner further denied appellant's request for remission of taxes and interest for tax years 2001, 2002, and 2003, and ordered that all penalties charged through the date of the commissioner's final determination be remitted.

In denying appellant's application for real property tax exemption, the commissioner made the following pertinent findings:

"Exemption is being considered pursuant to Ohio Revised Code 5709.12, which provides that '[r]eal and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation, ***.' In *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405, 406-407, the court held that 'to grant exemption under R.C. 5709.12, the arbiter must determine that (1) the property belongs to an institution, and (2) the property is being used exclusively for charitable purposes.' (Emphasis added.) The Ohio Supreme Court has defined 'charity' as '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, ***.' *Planned Parenthood Assn. v. Tax Commr.* (1966), 5 Ohio St.2d 117. Ohio courts use this definition to determine whether a property is used exclusively for charitable purposes.

"The record indicates that applicant is a nonprofit corporation. However, even though applicant may be a charitable institution, the property is not used exclusively for charitable purposes. The general rule in Ohio is that residential property is not exempt from real property taxation. *Philada Home Fund v. Bd. of Tax Appeals* (1966), 5 Ohio St.2d 135. The syllabus of that case states:

"Real property owned by a nonprofit charitable corporation the stated purpose of which is to secure and operate resident apartments for aged and needy persons is not exempt from taxation under section 5709.12, Revised Code, even though it is shown that the rent intended to be charged is at or below cost, and in no event to result in a profit, and that it is expected that some persons unable to

pay the full rental will be assisted by subventions from corporate funds.

“*Id.* at 135, 136.

“The court followed that rule in *Cogswell Hall, Inc. v. Kinney* (1987), 30 Ohio St.3d 43. The appellant in that case was a nonprofit corporation that furnished low-cost housing to 25 elderly women. The court held that the use of the property was not exclusively for charitable purposes and was not entitled to exemption under R.C. 5709.12.

“Because the subject property is used to provide low-cost housing, it is not used exclusively by applicant for charitable purposes and consequently does not qualify for a real property tax exemption under R.C. 5709.12.” Statutory transcript (“S.T.”) at 1-2.

In response to the commissioner’s final determination, the appellant specified the following errors in its appeal to this board:

“(1) The Final Determination of the Tax Commissioner unlawfully denied the Taxpayer’s request for an exemption under Ohio Revised Code §5709.12 since the subject property is used exclusively for charitable purposes.

“(2) The Tax Commissioner erred in determining that the subject property, which is used exclusively as housing for low income elderly or handicapped individuals, does not meet the requirement of being used exclusively for charitable purposes under Ohio Revised Code §5709.12.

“(3) The Tax Commissioner unreasonably and unlawfully relied on *Philada Home Fund v. Bd. of Tax Appeals* (19[6]6), 5 Ohio St.2d 135 and *Cogswell Hall, Inc. v. Kinney* (1987), 30 Ohio St.3d 43 to deny the exemption for the subject real property.

“(4) The Tax Commissioner failed to consider in its determination that the subject property is owned by a religious non-profit organization whose purpose is to provide housing to the aged, low-income residents.

“(5) The Final Determination of the Tax Commissioner is unreasonable and unlawful since it misinterpreted R.C. §5709.12(B), §5709.12(C) and §5709.12(E).

“(6) The Final Determination of the Tax Commissioner is against the manifest weight of the evidence.”

All parties appeared and were represented by counsel at the hearing before this board. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified to this board by the tax commissioner, the record of the hearing before this board (“H.R.”), and the briefs submitted by the parties.

We begin our review by observing that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. In this regard, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner’s determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

The issue presented in the instant matter is whether the commissioner erred in denying tax exempt status to certain real property. The authority to exempt property from ad valorem taxation emanates initially from Section 2, Article XII, of the Ohio Constitution:

“Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom,

general laws may be passed to exempt *** institutions used exclusively for charitable purposes ***.”

While the General Assembly has exercised its authority to enact legislation to exempt qualifying property from taxation, it has also expressed the limited scope of the grant, acknowledging that “all real property in this state is subject to taxation, except only such as is expressly exempted therefrom.” R.C. 5709.01(A). As a result, “in any consideration concerning the exemption from taxation of any property, the burden of proof shall be placed on the property owner to show that the property is entitled to exemption.” R.C. 5715.271. Therefore, apparent from the preceding, “exemption is the exception to the rule and statutes granting exemption are strictly construed.” *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186.

In the appeal before us, appellant sought exemption for the subject property pursuant to R.C. 5709.12.¹ R.C. 5709.12(B) provides, in pertinent part:

“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.”

¹ Prior to considering the merits of this case, we must note that appellant only sought exemption under R.C. 5709.12, and did not specify R.C. 5709.121 in its notice of appeal or in its application for exemption. Notice of appeal at 1-2, S.T. at 7. It is well settled that the Board of Tax Appeals has jurisdiction to consider only the applicability of those sections of the Revised Code raised by an appellant before the Tax Commissioner. See *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134. See, also, *Ohio Nurses Assoc. v. Levin* (Nov. 4, 2008), BTA No. 2007-N-148, unreported; *Walkley v. Wilkins* (May 20, 2008), BTA No. 2006-N-1580, unreported. Cf. *CNG Development Co. v. Limbach* (1992), 63 Ohio St.3d 28. Furthermore, “a notice of appeal does not confer jurisdiction upon the Board of Tax Appeals to resolve an issue, unless that issue is clearly specified in the notice of appeal.” *Cleveland Elec. Illum. Co. v. Lindley* (1982), 69 Ohio St.2d 71, 75. See, also, *Kern v. Tracy* (1995), 72 Ohio St.3d. In *Queen City Valves, Inc. v. Peck* (1954), 161 Ohio St. 579, the court determined that the term “specify” means to “mention specifically, to state in full and explicit terms.” *Id.* at 583. Thus, we consider only R.C. 5709.12 in reviewing this matter. See *Oikos Community Dev. Corp. v. Zaino* (Nov. 9, 2001), BTA No. 2000-T-2037, unreported. We note that recently the court held that it was jurisdictionally barred from considering a specification of error not raised in the notice of appeal to the Board of Tax Appeals, or in the notice of appeal to the court. See *Northeast Ohio Psych. Inst. v. Levin*, Slip Opinion No. 2009-Ohio-583, at ¶13.

In *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, at 203, the court held that “[a]ny institution, irrespective of its charitable or noncharitable character, may take advantage of a tax exemption if it is making exclusive charitable use of its property.” Therefore, to grant an exemption under R.C. 5709.12, it must first be determined that the property belongs to an institution, and that the property is being used exclusively for charitable purposes. *Highland Park Owners Inc. v. Tracy* (1994), 71 Ohio St.3d 405, 406-407. Additionally, to qualify for exemption under R.C. 5709.12, real property must not be used with a view to a profit, and cannot be in competition with commercial enterprises. *Am. Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38; *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 359. See, also, *Seven Hills Schools*, supra; *Seven Hills Schools v. Tracy* (June 11, 1999), BTA No. 1997-M-1572, unreported; *Youngstown Area Jewish Fedn. v. Limbach* (June 30, 1992), BTA No. 1988-G-117, unreported; *Jewish Community Ctr. of Cleveland v. Limbach* (June 30, 1992), BTA No. 1988-A-124, unreported; and *Dayton Art Inst. v. Limbach* (June 19, 1992), BTA No. 1986-A-521, unreported.

We initially address the requirement that the property must be owned by an institution. In *True Christianity Evangelism v. Tracy* (1999), 87 Ohio St.3d 48, the court held, “When considering a request for exemption under the portion of R.C. 5709.12(B) ***, the first point of inquiry must be whether the property belongs to an ‘institution.’” *Id.* at 50.

In *Highland Park Owners Inc. v. Tracy* (1994), 71 Ohio St.3d 405, the court defined the term “institution” as:

“An establishment, especially one of eleemosynary or public character or one affecting a community. An established or organized society or corporation. It may be private in its character, designed for profit to those composing the organization, or public and charitable in its purposes, or educational (e.g. college or university). ***”
Id. at 407.

Under this definition of “institution,” there is no specific requirement for an entity to have corporate status in order to be an institution, but it may be any organization or organized society. See, e.g., *Thomaston Woods L.P. v. Lawrence* (June 15, 2001), BTA No. 1999-L-551, unreported (holding that a for-profit limited partnership qualifies as an institution under R.C. 5709.12). In the present matter, the record indicates that appellant is a non-profit corporation engaged in providing residential living and some other services for low income, elderly, and handicapped families. In providing these services and to operate its corporation, appellant relies upon various religious organizations and federal assistance from the Department of Housing and Urban Development (“HUD”). Therefore, under the definition set forth in *Highland Park Owners*, supra, appellant qualifies as an institution.

At the hearing before the board, appellant presented one witness, Michael L. Tarver, the manager of the subject property. H.R. at 9. Ms. Tarver testified that the subject property is a 25-unit apartment complex that houses 26 low-income residents. Id. at 11-12. With regard to her duties as manager, Ms. Tarver stated that her responsibilities include maintenance of the subject property and providing services to the tenants. Id. at 11. Ms. Tarver also testified that, through a housing commission administered by a religious convention known as the National Baptist Convention, local churches sponsor buildings in their communities. Id. at 13-

14. The subject property, known as Love Zion Manor, is sponsored by Love Zion Baptist Church, a local church located in Columbus, Ohio. *Id.* The local churches submit a “memorandum of understanding” to the aforementioned housing commission, which is an agreement that states the local church will sponsor certain costs of constructing a building such as the subject. *Id.* at 14. Ms. Tarver testified that “the local church to [sic] sponsor the predevelopment costs, and the purchasing of the land to participate in the federally subsidized housing program.” *Id.* According to Ms. Tarver, once the property is constructed, the sponsoring church continues to provide services to the residents. *Id.* at 14-15. These services include donating supplemental food to the residents and providing luncheons and bible study classes. *Id.* at 15-16. Ms. Tarver also testified that the subject is not operated to generate a profit, and that all funds are used to maintain the subject and assist the residents. *Id.* at 21.

Upon cross-examination, Ms. Tarver was asked about the specific services provided to the tenants. Ms. Tarver acknowledged that, similar to other HUD properties, appellant is required to pay the housing and utility expenses associated with the subject. *H.R.* at 26. With regard to health services available at the subject, Ms. Tarver testified that no mental health services or drug counseling is provided, but blood pressure and diabetes screenings are provided through an outside program on a monthly basis. *Id.* at 28-29. Ms. Tarver further stated that if a resident has a specific need, appellant will assist him/her in obtaining the needed services. *Id.* at 29-30, 38-43.

As we determined above that the subject property is owned by an institution, we now consider whether appellant was “making exclusive charitable use”

of the subject.² *White Cross and Highland Park Owners*, supra. While the General Assembly has not defined what activities of an institution constitute charitable purposes, the Supreme Court held in *Planned Parenthood Assn. of Columbus, Inc. v. Tax Commr.* (1966), 5 Ohio St.2d 117, paragraph one of the syllabus, that:

“[I]n the absence of a legislative definition, ‘charity,’ in the legal sense, is the attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit 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 phrase “used exclusively” has been interpreted by the Ohio Supreme Court to mean primary use. *True Christianity*, supra. The court commented further in regard to what constitutes charitable use in *Bethesda Healthcare, Inc.*, 101 Ohio St.3d 420, 2004-Ohio-1749, at 39, stating,

“Whether an institution renders sufficient services to persons who are unable to afford them to be considered as making charitable use of property must be determined on the totality of the circumstances ***.”

We emphasize that the burden rests with appellant to prove by competent and probative evidence that the subject property was used exclusively for charitable purposes. Initially, we note that appellant is a non-profit corporation. *Id.* and H.R. at

² In the context of whether an entity that is leasing a portion of real property is entitled to exemption under R.C. 5709.12(B) and 5709.121 based upon the services rendered by a lessee, the Supreme Court recently stated that “the court has long held that under the general exemption for ‘exclusive charitable use’ of property set forth in R.C. 5709.12(B), it is the *owner’s use* of the property, not the lessee’s use, that determines whether the property should be exempted.” See *Northeast Ohio Psych. Inst.*, supra, at 5. (Emphasis sic.) While R.C. 5709.121 is not applicable in the instant appeal, the court found that the appellant in that matter could not rely upon the lessee’s charitable activities to qualify as a charitable institution under R.C. 5709.121. The court denied exemption under both R.C. 5709.121 and 5709.12(B), finding that, under the latter provision, “the property at issue plainly would not qualify for exemption, because Northeast is using that property for leasing, not for providing mental health care.” *Id.*

18. We also note appellant's answer to question fourteen of its application for real property tax exemption, which inquires as to how the property is currently used. Appellant answered "[s]ince the beginning the property has been solely used for federally subsidized low-income [s]ection 8 [e]lderly and [h]andicapped families." S.T. at 7.

The Ohio Supreme Court, and this board, have previously held that property used for private residential housing, including properties where low-income individuals are not fully responsible for their rent, is not entitled to exemption under R.C. 5709.12(B). *Philada Home Fund v. Bd. of Tax Appeals* (1966), 5 Ohio St.2d 135; *Nat. Church Residences v. Lindley* (1985), 18 Ohio St.3d 53; *Rehab Project v. Tracy* (May 23, 1997), BTA No. 1995-R-418. Also, in *Nat. Church Residences*, supra, the court rejected a "services exception" that had been previously established in *Carmelite Sisters, St. Rita's Home v. Bd. of Review* (1969), 18 Ohio St.2d 41. In *Carmelite*, exemption was granted based upon additional services provided to elderly tenants beyond those traditionally provided to apartment residents. In rejecting this exception, the court relied upon the criteria for the provision of senior housing required by subsequently enacted R.C. 5701.13 and the vicarious nature of the services provided to residents. See, also, *Cogswell Hall v. Kinney* (1987), 30 Ohio St.3d 43 (property rented to elderly women at rates that cover less than half the maintenance costs held taxable); *Oikos Community Dev. Corp.*, supra (finding a 501(c)(3) tax-exempt charitable organization's renting of multi-family properties to low-income tenants was not an exclusive use for charitable purposes and did not qualify for tax exempt status). In *Nat. Steelworkers v. Wilkins* (Jan. 20, 2009), BTA Nos. 2006-728,

729, unreported, appeals pending, this board held that an unlicensed independent living facility, operated in connection with a HUD program, was not exempt from taxation under either R.C. 5709.12(B) or R.C. 5709.121. There, the property in issue provided support services to its tenants such as “Meals-on-Wheels, taxi companies, pharmacies, medical professionals, beauticians, and exercise trainers.” *Id.* at 2. Also provided was assistance with “personal finance issues, personal hygiene, apartment maintenance, and arranging social activities.” *Id.*

Several of the facts in the instant matter are similar to those found in *Nat. Steelworkers*, *supra*, such as the utilization of a service coordinator to assist tenants with certain needs as mentioned above. Unlike *Nat. Steelworkers*, certain religious activities are provided by appellant for the use and enjoyment of its tenants, and a “sponsoring” church will assist in providing services to tenants. As noted above, Ms. Tarver stated that a local church will sponsor predevelopment costs and the purchasing of the land to participate in the HUD program. H.R. at 14. Ms. Tarver also testified that a church is a partial owner of appellant. *Id.* at 28. However, no corroborating evidence, in the form of documents showing ownership or costs borne by a church, is found in the record, and even if such evidence was in the record, it would not disprove that appellant is used primarily for federally subsidized housing purposes.³ Appellant’s federal tax returns for tax years 2002 through 2004 show that appellant is almost 100% dependent upon public support to operate. H.R., Exs. C1-C4. No religious institution or church is listed as supporting appellant in these documents. *Id.*

³ While appellant may have an association with a church or religious organization, we emphasize that it is the owner’s *use* that is in issue as it relates to an exemption under R.C. 5709.12(B). See footnote 2. (Emphasis added.)

While several helpful and meaningful services are provided to appellant's residents, the primary purpose, as testified to by Ms. Tarver, is to provide "safe, sanitary, affordable housing so they can live with dignity and pride." H.R. at 43. As such, as in *Nat. Steelworkers* and *Nat. Church Residences*, supra, we find that these services, including any religious services, are vicariously charitable in nature, and that appellant solely provides subsidized housing for low-income, elderly, and handicapped individuals. *Philada*, supra.

We note that this board has previously found a charitable exemption when the use of specific services was an integral requirement for all residents as a condition for admission. See *88/96 LP and Community Housing Network v. Wilkins* (July 20, 2007), BTA No. 2005-A-55, unreported, at 12 (involving property described as "permanent affordable housing linked to a safety net" used to "provide case management services, mental health treatment, drug and alcohol treatment, health services, and those types of services that will help the individuals develop life skills so that they can continue to live in the apartment."); *St. Vincent Hotel, Inc. v. Tracy* (Apr. 25, 1997), BTA No. 1996-K-419, et. seq., unreported (finding property used as part of a general "life skills" program, which provides housing, is entitled to exemption). In the instant matter, appellant does not require its tenants to participate in any specific service or program. The lease agreements in the record do not appear to contain any provision requiring such participation. H.R., Exs. B1-B3. Ms. Tarver's testimony reflects that the services provided by appellant's church sponsor are voluntary in nature: "Well, one thing the mission does is they come every month and they provide a lunch. They provide bible study. They also provide individual support. They have

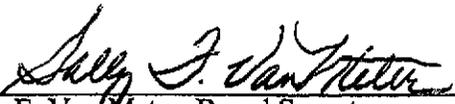
adopted the residents, those that want to participate, in whatever their needs might be.”

H.R. at 27.

While we recognize the social importance of the services provided by appellant, we are constrained to apply the law to the facts before us. Cf. *Rickenbacker Port Auth. v. Limbach* (1992), 64 Ohio St.3d 628, quoting *Toledo Business & Professional Women's Retirement Living, Inc. v. Bd. of Tax Appeals* (1971), 27 Ohio St.2d 255. The record reflects that appellant does not use the subject property primarily and exclusively for charitable purposes. *White Cross, Highland Park Owners*, and *True Christianity*, supra. Its primary purpose is to use the subject property as federally subsidized residential housing, and therefore, appellant does not qualify for an exemption under R.C. 5709.12.

Therefore, we find the final determination of the Tax Commissioner to be according to law, and affirm such determination.

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

5701.13 Home for the aged defined.

(A) As used in this section:

(1) "Nursing home" means a nursing home or a home for the aging, as those terms are defined in section 3721.01 of the Revised Code, that is issued a license pursuant to section 3721.02 of the Revised Code.

(2) "Residential care facility" means a residential care facility, as defined in section 3721.01 of the Revised Code, that is issued a license pursuant to section 3721.02 of the Revised Code.

(3) "Adult care facility" means an adult care facility as defined in section 3722.01 of the Revised Code that is issued a license pursuant to section 3722.04 of the Revised Code.

(B) As used in Title LVII [57] of the Revised Code, and for the purpose of other sections of the Revised Code that refer specifically to Chapter 5701. or section 5701.13 of the Revised Code, a "home for the aged" means either of the following:

(1) A place of residence for aged and infirm persons that satisfies divisions (B)(1)(a) to (e) of this section:

(a) It is a nursing home, residential care facility, or adult care facility.

(b) It is owned by a corporation, unincorporated association, or trust of a charitable, religious, or fraternal nature, which is organized and operated not for profit, which is not formed for the pecuniary gain or profit of, and whose net earnings or any part of whose net earnings is not distributable to, its members, trustees, officers, or other private persons, and which is exempt from federal income taxation under section 501 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1.

(c) It is open to the public without regard to race, color, or national origin.

(d) It does not pay, directly or indirectly, compensation for services rendered, interest on debts incurred, or purchase price for land, building, equipment, supplies, or other goods or chattels, which compensation, interest, or purchase price is unreasonably high.

(e) It provides services for the life of each resident without regard to the resident's ability to continue payment for the full cost of the services.

(2) A place of residence that satisfies divisions (B)(1)(b), (d), and (e) of this section; that satisfies the definition of "nursing home," "residential care facility," or "adult care facility" under section 3721.01 or 3722.01 of the Revised Code regardless of whether it is licensed as such a home or facility; and that is provided at no charge to individuals on account of their service without compensation to a charitable, religious, fraternal, or educational institution, which individuals are aged or infirm and are members of the corporation, association, or trust that owns the place of residence. For the purposes of division (B) (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.

Exemption from taxation shall be accorded, on proper application, only to those homes or parts of homes which meet the standards and provide the services specified in this section.

Nothing in this section shall be construed as preventing a home from requiring a resident with financial need to apply for any applicable financial assistance or requiring a home to retain a resident who willfully refuses to pay for services for which the resident has contracted even though the resident has sufficient resources to do so.

(C)(1) If a corporation, unincorporated association, or trust described in division (B)(1)(b) of this section is granted a certificate of need pursuant to section 3702.52 of the Revised Code to construct, add to, or otherwise modify a nursing home, or is given approval pursuant to section 3791.04 of the Revised Code to construct, add to, or otherwise modify a residential care facility or adult care facility and if the corporation, association, or trust submits an affidavit to the tax commissioner stating that, commencing on the date of licensure and continuing thereafter, the home or facility will be operated in accordance with the requirements of divisions (B)(1)(a) to (e) of this section, the corporation, association, or trust shall be considered to be operating a "home for the aged" within the meaning of division (B)(1) of this section, beginning on the first day of January of the year in which such certificate is granted or approval is given.

(2) If a corporation, association, or trust is considered to be operating a "home for the aged" pursuant to division (C)(1) of this section, the corporation, association, or trust shall notify the tax commissioner in writing upon the occurrence of any of the following events:

(a) The corporation, association, or trust no longer intends to complete the construction of, addition to, or modification of the home or facility, to obtain the appropriate license for the home or facility, or to commence operation of the home or facility in accordance with the requirements of divisions (B)(1)(a) to (e) of this section;

(b) The certificate of approval referred to in division (C)(1) of this section expires, is revoked, or is otherwise terminated prior to the completion of the construction of, addition to, or modification of the home or facility;

(c) The license to operate the home or facility is not granted by the director of health within one year following completion of the construction of, addition to, or modification of the home or facility;

(d) The license to operate the home or facility is not granted by the director of health within four years following the date upon which the certificate or approval referred to in division (C)(1) of this section was granted or given;

(e) The home or facility is granted a license to operate as a nursing home, residential care facility, or adult care facility.

(3) Upon the occurrence of any of the events referred to in divisions (C)(2)(a), (b), (c), (d), and (e) of this section, the corporation, association, or trust shall no longer be considered to be operating a "home for the aged" pursuant to division (C)(1) of this section, except that the tax commissioner, for good cause shown and to the extent the commissioner considers appropriate, may extend the time period specified in division (C)(2)(c) or (d) of this section, or both. Nothing in division (C)(3) of this

section shall be construed to prevent a nursing home, residential care facility, or adult care facility from qualifying as a "home for the aged" if, upon proper application made pursuant to division (B) of this section, it is found to meet the requirements of divisions (A) and (B) of this section.

Effective Date: 09-06-2002

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, except in connection with a sale and transfer of such a tract, lot, or parcel to a county land reutilization corporation organized under Chapter 1724. of the Revised Code, 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.

(F) Real property held by a county land reutilization corporation organized under Chapter 1724. of the Revised Code shall be exempt from taxation. Notwithstanding section 5715.27 of the Revised Code, a county land reutilization corporation is not required to apply to any county or state agency in order to qualify for the exemption.

The exemption shall commence on the day title to the property is transferred to the corporation and shall continue to the end of the tax year in which the instrument transferring title from the corporation to another owner is recorded, if the use to which the other owner puts the property does not qualify for an exemption under this section or any other section of the Revised Code. If the title to the property is transferred to the corporation and from the corporation 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 corporation shall be remitted by the county auditor for each day of the year that title is held by the corporation.

Upon transferring the title to another person, the corporation shall file with the county auditor an

affidavit affirming that the title was transferred to such other person and shall identify the transferee by name. If the corporation transfers title to the property to anyone that does not qualify or the use to which the property is put does not qualify the property for an exemption under this section or any other section of the Revised Code, 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. 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.

In lieu of the application for exemption otherwise required to be filed as required under section 5715.27 of the Revised Code, a county land reutilization corporation holding the property shall, upon the request of any county or state agency, submit its articles of incorporation substantiating its status as a county land reutilization corporation.

Effective Date: 09-06-2002; 06-30-2005; 2008 SB353 04-07-2009

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.

(C) For purposes of this section, an institution that meets all of the following requirements is conclusively presumed to be a charitable institution :

(1) The institution is a nonprofit corporation or association, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(2) The institution is exempt from federal income taxation under section 501(a) of the Internal Revenue Code;

(3) The majority of the institution's board of directors are appointed by the mayor or legislative authority of a municipal corporation or a board of county commissioners, or a combination thereof;

(4) The primary purpose of the institution is to assist in the development and revitalization of downtown urban areas.

Effective Date: 12-13-2001; 06-30-2005; 2008 HB562 09-22-2008; 2008 HB458 12-31-2008

Lawriter - ORS - 5711.18 Valuation of accounts and personal property

5711.18 Valuation of accounts and personal property - procedure - income yield.

In the case of accounts receivable, the book value thereof less book reserves shall be listed and shall be taken as the true value thereof unless the assessor finds that such net book value is greater or less than the then true value of such accounts receivable in money. In the case of personal property used in business, the book value thereof less book depreciation at such time shall be listed, and such depreciated book value shall be taken as the true value of such property, unless the assessor finds that such depreciated book value is greater or less than the then true value of such property in money. Claim for any deduction from net book value of accounts receivable or depreciated book value of personal property must be made in writing by the taxpayer at the time of making the taxpayer's return; and when such return is made to the county auditor who is required by sections 5711.01 to 5711.36, inclusive, of the Revised Code, to transmit it to the tax commissioner for assessment, the auditor shall, as deputy of the commissioner, investigate such claim and shall enter thereon, or attach thereto, in such form as the commissioner prescribes, the auditor's findings and recommendations with respect thereto; when such return is made to the commissioner, such claim for deduction from depreciated book value of personal property shall be referred to the auditor, as such deputy, of each county in which the property affected thereby is listed for investigation and report.

Any change in the method of determining true value, as prescribed by the tax commissioner on a prospective basis, shall not be admissible in any judicial or administrative action or proceeding as evidence of value with regard to prior years' taxes. Information about the business, property, or transactions of any taxpayer obtained by the commissioner for the purpose of adopting or modifying any such method shall not be subject to discovery or disclosure.

Effective Date: 09-29-2000

5717.02 Appeal from final determination by tax commissioner - procedure - hearing.

Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by such decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner concerning an application for a property tax exemption may be taken to the board of tax appeals by a school district that filed a statement concerning such application under division (C) of section 5715.27 of the Revised Code. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the director of development if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner or redetermination by the director has been given as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code. The notice of such appeal may be filed in person or by certified mail, express mail, or authorized delivery service. If the notice of such appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the notice sent by the commissioner or director to the taxpayer, enterprise, or other person of the final determination or redetermination complained of, and shall also specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

Upon the filing of a notice of appeal, the tax commissioner or the director, as appropriate, shall certify to the board a transcript of the record of the proceedings before the commissioner or director, together with all evidence considered by the commissioner or director in connection therewith. Such appeals or applications may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the commissioner or director, but upon the application of any interested party the board shall order the hearing of additional evidence, and it may make such investigation concerning the appeal as it considers proper.

Effective Date: 09-06-2002

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TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter F > PART I > § 501

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

(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 (l).

(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.

(4)

(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

Passage results

New International Reader's Version (NIRV)

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Matthew 25 (New International Reader's Version)

Matthew 25

The Story of Ten Bridesmaids

¹ "Here is what the kingdom of heaven will be like at that time. Ten bridesmaids took their lamps and went out to meet the groom. ² Five of them were foolish. Five were wise. ³ The foolish ones took their lamps but didn't take any olive oil with them. ⁴ The wise ones took oil in jars along with their lamps. ⁵ The groom did not come for a long time. So the bridesmaids all grew tired and fell asleep.

⁶ "At midnight someone cried out, 'Here's the groom! Come out to meet him!'

⁷ "Then all the bridesmaids woke up and got their lamps ready. ⁸ The foolish ones said to the wise ones, 'Give us some of your oil. Our lamps are going out.'

⁹ " 'No,' they replied. 'There may not be enough for all of us. Instead, go to those who sell oil. Buy some for yourselves.'

¹⁰ "So they went to buy the oil. But while they were on their way, the groom arrived. The bridesmaids who were ready went in with him to the wedding dinner. Then the door was shut.

¹¹ "Later, the other bridesmaids also came. 'Sir! Sir!' they said. 'Open the door for us!'

¹² "But he replied, 'What I'm about to tell you is true. I don't know you.'

¹³ "So keep watch. You do not know the day or the hour that the groom will come.

The Story of Three Servants

¹⁴ "Again, here is what the kingdom of heaven will be like. A man was going on a journey. He sent for his servants and put them in charge of his property. ¹⁵ He gave \$10,000 to one. He gave \$4,000 to another. And he gave \$2,000 to the third. The man gave each servant the amount of money he knew the servant could take care of. Then he went on his journey.

¹⁶ "The servant who had received the \$10,000 went at once and put his money to work. He earned \$10,000 more. ¹⁷ The one with the \$4,000 earned \$4,000 more. ¹⁸ But the man who had received \$2,000 went and dug a hole in the ground. He hid his master's money in it.

¹⁹ "After a long time the master of those servants returned. He wanted to collect all the money they had earned. ²⁰ The man who had received \$10,000 brought the other \$10,000. 'Master,' he said, 'you trusted me with \$10,000. See, I have earned \$10,000 more.'

²¹ "His master replied, 'You have done well, good and faithful servant! You have been faithful with a few things. I will put you in charge of many things. Come and share your master's happiness!'

²² "The man with \$4,000 also came. 'Master,' he said, 'you trusted me with \$4,000. See, I have earned \$4,000 more.'

²³ "His master replied, 'You have done well, good and faithful servant! You have been faithful with a few things. I will put you in charge of many things. Come and share your master's happiness!'

²⁴ "Then the man who had received \$2,000 came. 'Master,' he said, 'I knew that you are a hard man. You harvest where you have not planted. You gather crops where you have not scattered seed. ²⁵ So I was afraid. I went out and hid your \$2,000 in the ground. See, here is what belongs to you.'

²⁶ "His master replied, 'You evil, lazy servant! So you knew that I harvest where I have not planted? You knew that I gather crops where I have not scattered seed? ²⁷ Well then, you should have put my money in the bank. When I returned, I would have received it back with interest.'

²⁸ "Then his master commanded the other servants, 'Take the \$2,000 from him. Give it to the one who has \$20,000. ²⁹ Everyone who has will be given more. He will have more than enough. And what about anyone who doesn't have? Even what he has will be taken away from him. ³⁰ Throw that worthless servant outside. There in the darkness, people will sob and

grind their teeth.'

The Sheep and the Goats

³¹ "The Son of Man will come in all his glory. All the angels will come with him. Then he will sit on his throne in the glory of heaven. ³² All the nations will be gathered in front of him. He will separate the people into two groups. He will be like a shepherd who separates the sheep from the goats. ³³ He will put the sheep to his right and the goats to his left.

³⁴ "Then the King will speak to those on his right. He will say, 'My Father has blessed you. Come and take what is yours. It is the kingdom prepared for you since the world was created. ³⁵ I was hungry. And you gave me something to eat. I was thirsty. And you gave me something to drink. I was a stranger. And you invited me in. ³⁶ I needed clothes. And you gave them to me. I was sick. And you took care of me. I was in prison. And you came to visit me.'

³⁷ "Then the people who have done what is right will answer him. 'Lord,' they will ask, 'when did we see you hungry and feed you? When did we see you thirsty and give you something to drink? ³⁸ When did we see you as a stranger and invite you in? When did we see you needing clothes and give them to you? ³⁹ When did we see you sick or in prison and go to visit you?'

⁴⁰ "The King will reply, 'What I'm about to tell you is true. Anything you did for one of the least important of these brothers of mine, you did for me.'

⁴¹ "Then he will say to those on his left, 'You are cursed! Go away from me into the fire that burns forever. It has been prepared for the devil and his angels. ⁴² I was hungry. But you gave me nothing to eat. I was thirsty. But you gave me nothing to drink. ⁴³ I was a stranger. But you did not invite me in. I needed clothes. But you did not give me any. I was sick and in prison. But you did not take care of me.'

⁴⁴ "They also will answer, 'Lord, when did we see you hungry or thirsty and not help you? When did we see you as a stranger or needing clothes or sick or in prison and not help you?'

⁴⁵ "He will reply, 'What I'm about to tell you is true. Anything you didn't do for one of the least important of these, you didn't do for me.'

⁴⁶ "Then they will go away to be punished forever. But those who have done what is right will receive eternal life."



Section 202 Supportive Housing for the Elderly Program

Summary:

HUD provides capital advances to finance the construction, rehabilitation or acquisition with or without rehabilitation of structures that will serve as supportive housing for very low-income elderly persons, including the frail elderly, and provides rent subsidies for the projects to help make them affordable.

Purpose:

The Section 202 program helps expand the supply of affordable housing with supportive services for the elderly. It provides very low-income elderly with options that allow them to live independently but in an environment that provides support activities such as cleaning, cooking, transportation, etc. The program is similar to Supportive Housing for Persons with Disabilities (Section 811).

Type of Assistance:

HUD provides interest-free capital advances to private, nonprofit sponsors to finance the development of supportive housing for the elderly. The capital advance does not have to be repaid as long as the project serves very low-income elderly persons for 40 years.

Project rental assistance funds are provided to cover the difference between the HUD-approved operating cost for the project and the tenants' contribution towards rent. Project rental assistance contracts are approved initially for 3 years and are renewable based on the availability of funds.

The available program funds for a fiscal year are allocated to HUD's local offices according to factors established by the Department.

Eligible Grantees:

Private nonprofit organizations can apply to develop a Section 202 project if they can, among other requirements, submit a resolution that they will provide a minimum capital investment equal to 0.5 percent of the HUD-approved capital advance, up to a maximum of \$25,000 for national sponsors or \$10,000 for other sponsors. Public entities are not eligible for funding under this program.

Eligible Customers:

Occupancy in Section 202 housing is open to any very low-income household comprised of at least one person who is at least 62 years old at the time of initial occupancy.

Application:

 Information by State

 Print version

Want More Information?

Program instructions are in HUD Handbooks, Notices and Forms which can be found on HUDclips.

Prospective applicants should contact the local HUD Multifamily Hub or Program Center with jurisdiction for the property.

The Multifamily Housing Clearinghouse (MFHC) 800-685-8470 also provides information and publications on Service Coordination.

EMAIL US your questions about the Section 202 Program.

Involvement of Faith Based Organizations in HUD Programs.

Applicants must submit an application for a capital advance, including a Request for Fund Reservation (HUD Form 92015-CA) and other information in response to the Notice of Funding Availability (NOFA) published in the Federal Register each fiscal year. Applications must be submitted to the local HUD field office with jurisdiction over the area where the proposed project will be located. Those selected for funding must meet basic program requirements, including private nonprofit status, financial commitment and acceptable control of an approvable site. Awards are usually announced in September.

Technical Guidance:

The program is authorized under the Housing Act of 1959; Section 210 of the Housing and Community Development Act of 1974 P. L. 86-372 (12 U.S.C. 1701q, 73 Stat. 654, 667); the National Affordable Housing Act, P. L. 101-625 (42 U.S.C. 12701); the Housing and Community Development Act of 1992 (P.L. 102-550); the Rescissions Act (P.L. 104-19); and the American Homeownership and Economic Opportunity Act of 2000 (P.L. 106-569). Program regulations are in 24 CFR Part 891. To learn more about the Section 202 program, see Supportive Housing for the Elderly (HUD Handbook 4571.3) and Supportive Housing for the Elderly--Conditional Commitment--Final (HUD Handbook 4571.5) which are available on the Internet at HUDclips or from the HUD Multifamily Clearinghouse at 1-800-685-8470. Also see notice H96-102 REV 00-23 (HUD).

Content current as of 8 November 2007

U.S. Department of Housing and Urban Development

451 7th Street, S.W., Washington, DC 20410

Telephone: (202) 708-1112 [Find the address of a HUD office near you](#)

Section 1701q. Supportive housing for the elderly

(a) Purpose

The purpose of this section is to enable elderly persons to live with dignity and independence by expanding the supply of supportive housing that -

- (1) is designed to accommodate the special needs of elderly persons; and