

ORIGINAL

IN THE  
SUPREME COURT OF OHIO

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

Appellant,

v.

WILLIAM W. WILKINS  
[RICHARD A. LEVIN],  
Ohio Tax Commissioner, *et al.*,

Appellees.

Case No. 2009-0919

Appeal from Ohio Board of Tax Appeals  
Case No. 2006-N-1492

NBC-USA HOUSING, INC. - THIRTEEN,  
D/B/A NEW SALEM MANOR,

Appellant,

v.

RICHARD A. LEVIN,  
Ohio Tax Commissioner, *et al.*,

Appellees.

Case No. 2009-1436

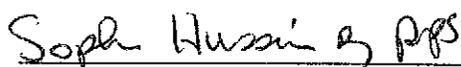
Appeal from Ohio Board of Tax Appeals  
Case No. 2007-R-100

**APPELLEE TAX COMMISSIONER'S MOTION FOR STAY, MEMORANDUM IN  
SUPPORT, AND MEMORANDUM IN OPPOSITION  
TO APPELLANTS' MOTION TO CONSOLIDATE**

**FILED**  
OCT 09 2009  
CLERK OF COURT  
SUPREME COURT OF OHIO

The Appellee, Richard A. Levin, Tax Commissioner of Ohio (the "Tax Commissioner"), hereby moves the court to stay briefing in Case No. 2009-1436 pending the resolution of Case No. 2009-0919. A resolution of the common legal issues in the older case merits a stay of the briefing in the newer case. Although each appeal involves an application for a real property tax exemption, there are separate owners of the properties for which the exemptions are sought; each matter was tried separately before the Board of Tax Appeals; each has a separate record on appeal to the court; and each Appellant has raised similar, but different, issues in their respective notice of appeal. The briefing in Case No. 2009-0919 is almost complete while the briefing in the newer case has not yet begun. The Appellant in each appeal has requested consolidation of the two appeals. The Tax Commissioner asserts that consolidation is not appropriate, but that staying the newer case will allow the Court to resolve the similar issues in the two appeals. A memorandum in support of this motion, and in opposition to the Motion to Consolidate attached and incorporated herein.

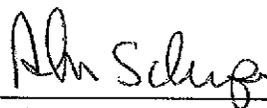
Respectfully submitted,



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Case No. 2009-1436

## MEMORANDUM

Pending before the Court are two distinct appeals that share several common legal issues. Case Nos. 2009-0919 and 2009-1436, both of which are appeals from decisions of the Board of Tax Appeals (“BTA”), concern applications for a real property tax exemption for separate Section 8 housing projects for the elderly and disabled. The two owners of the real property (NBC-USA Housing, Inc. – Five (“NBC-5”) in Case No. 2009-0919 and NBC-USA Housing, Inc. – Thirteen (“NBC-13”) in Case No. 2009-1436) have moved to consolidate the two appeals. However, given the posture and nature of the two appeals, the Tax Commissioner (the only common party in the two appeals) asserts that consolidation is not appropriate. Instead, briefing in the newer appeal involving the application by NBC-13 should be stayed pending the resolution of the older appeal involving NBC-5.

In Case No. 2009-0919, the BTA affirmed the Tax Commissioner’s denial of the exemption application filed by NBC-5 for the property located at 2436 Ennis Road, Columbus, Ohio. In that appeal, NBC-5 and the Tax Commissioner have already filed their main briefs, and NBC-5’s reply brief is due on October 12, 2009.

In Case No. 2009-1436, the BTA affirmed the Tax Commissioner’s denial of the exemption application filed by NBC-13 for the property located at 2760 Sunbury Road, Columbus, Ohio. In that appeal, the record was filed on September 15, 2009. As a result, NBC-13’s main brief is not due until October 26, 2009.

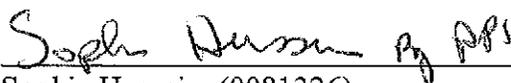
While NBC-13 claims that it provides services to its tenants and that such services are sufficient to render the property exempt, NBC-5 makes no such allegations. Compare NBC-5 Notice of Appeal at ¶¶7, 9-10 and NBC-13 Notice of Appeal, at ¶¶8-9. In addition, NBC-5 describes itself as a non-profit organization whereas NBC-13 claims to be a charitable institution.

Compare NBC-5 Notice of Appeal at ¶3 and NBC-13 Notice of Appeal at ¶3. These differences in claimed errors in the notices of appeal affect the legal arguments that have been made, or will be made, by the Tax Commissioner in his briefing.

While there are similar legal issues in both cases, the different procedural postures, as well as their own distinct records, prohibit the consolidation of the two cases. The Tax Commissioner asserts that the briefing in NBC-13's appeal, Case No. 2009-1436, should be stayed pending a resolution of Case No. 2009-0919. This would afford NBC-13 and the Tax Commissioner the opportunity to have the Court resolve the common legal issues before proceeding with briefing in Case No. 2009-1436. This approach would conserve the Court's time and the parties' expenses (the stated purpose of Appellants' Motion to Consolidate) without depriving the Tax Commissioner of the opportunity to set forth the evidence and arguments unique to Case No. 2009-1436. It is simply too late to consolidate the cases given that the briefing in Case No. 2009-0919 is almost complete. Given the unique facts of each appeal, the only consolidation that would be appropriate is to consolidate the oral arguments to the Court.

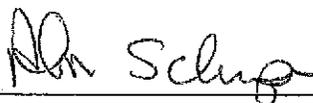
Accordingly, the Tax Commissioner respectfully requests that the Court deny Appellants' Motion to Consolidate and, instead, stay the briefing in Case No. 2009-1436 until the Court issues its decision in Case No. 2009-0919.

Respectfully submitted,



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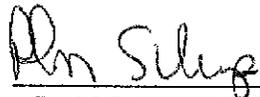


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Case No. 2009-1436

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion to Stay, Memorandum in Support, and Memorandum in Opposition to Appellants' Motion to Consolidate was sent by regular U.S. Mail this 9th day of October, 2009 to Karen H. Bauernschmidt and Charles J. Bauernschmidt, 1370 West 6<sup>th</sup> Street, Suite 200, Cleveland, Ohio 44113; Mark Gillis and Karol C. Fox, Rich & Gillis Law Group, LLC, 6400 Riverside Dr. #D, Dublin, Ohio 43017; and Paul M. Stickel, Franklin County Assistant Prosecutor, 373 South High Street, 20<sup>th</sup> Floor, Columbus, Ohio 43215-6318.

  
ALAN SCHWEPE